INDEX.

ABSENTEES.

See CONSTITUTIONAL LAW, 4.

ACCOUNTS AND ACCOUNTING.

See PARTNERSHIP, 5, 6, 7;
PRACTICE AND PROCEDURE, 4.

ACTIONS.

1. *Where to be brought; effect of statutory provision as to.*

A provision in a statute prescribing that an action shall only be brought in a particular district operates *pro tanto* to displace the provisions upon that subject in the General Jurisdiction Act of 1888, 25 Stat. 433, c. 866. *United States* v. *Congress Construction Co.*, 199.

2. *On bond under Materialmen Act of 1894; where brought.*

Under the Materialmen Act of August 13, 1894, c. 280, 28 Stat. 278, as amended February 24, 1905, c. 778, 33 Stat. 811, an action for performance of a bond given under such act can only be instituted in the district in which the contract was to be performed. *Ib.*

See BANKRUPTCY, 1; CONSTITUTIONAL LAW, 4; CONTRACTS, 18; INTERSTATE COMMERCE, 13, 14; JURISDICTION, A 4, 13; C; PARTNERSHIP, 7; PRINCIPAL AND AGENT, 1, 2.

ACTS OF CONGRESS.

BANKRUPTCY.—Act of July 1, 1898, 30 Stat. 544 (see Bankruptcy): *Tefft, Weller & Co.* v. *Munsuri*, 114; (see Constitutional Law, 25): *Glickstein* v. *United States*, 139.

COMMERCE AND NAVIGATION.—Rev. Stat., §§ 4141, 4178, as amended by act of June 23, 1874, 18 Stat. 252 (see Taxes and Taxation, 10): *Southern Pacific Co.* v. *Kentucky*, 63.

COPYRIGHTS.—Rev. Stat., § 4953, as amended by act of March 3, 1891, 26 Stat. 1106 (see Copyrights, 1, 3): *Kalem Co.* v. *Harper Brothers*, 55.

CRIMINAL LAW.—Rev. Stat., §§ 771, 1022 (see Pure Food and Drug Act, 2): *United States* v. *Morgan*, 274. Rev. Stat., §§ 3894, 5480 (see Criminal Law, 3, 4): *United States* v. *Stever*, 167. Rev. Stat., § 5418 (see Fraud, 2): *United States* v. *Plyler*, 15.

EVIDENCE.—Rev. Stat., § 860 (see Constitutional Law, 25): *Glickstein* v. *United States*, 139.

INTERNAL REVENUE.—Rev. Stat., § 3177 (see Oleomargarine Act): *United States* v. *Barnes*, 513.

INTERSTATE COMMERCE.—Act of February 4, 1887, 24 Stat. 379 (see Interstate Commerce, 3, 6, 12, 19): *Robinson* v. *Baltimore & Ohio R. R. Co.*, 506; *Interstate Com. Comm.* v. *Diffenbaugh*, 42; *United States* v. *Updike Grain Co.*, 215; *Southern Ry. Co.* v. *Reid*, 424; *Interstate Com. Comm.* v. *Union Pacific Ry. Co.*, 541. Hepburn Act of June 29, 1906, 34 Stat. 584 (see Interstate Commerce, 7): *Union Pacific R. R. Co.* v. *Updike Grain Co.*, 215; § 2 (see Interstate Commerce, 19): *Southern Ry. Co.* v. *Reid*, 424. Hours of Service Law, March 4, 1907, 34 Stat. 1415 (see States, 17): *Northern Pacific Ry. Co.* v. *Washington*, 370.

JUDICIARY.—Rev. Stat., § 709 (see Jurisdiction, A 15): *Missouri & Kansas I. Ry. Co.* v. *Olathe*, 187, 191. Rev. Stat., § 1007 (see Appeal and Error, 6): *Title Guaranty Co.* v. *General Electric Co.*, 401. Tucker Act of March 3, 1887, 24 Stat. 505 (see Jurisdiction, E): *Herrera* v. *United States*, 558. Act of August 13, 1888, 25 Stat. 433 (see Actions, 1): *United States* v. *Congress Construction Co.*, 199. Act of March 3, 1891, 26 Stat. 826 (see Jurisdiction, A 1, 4, 12): *Brown* v. *Alton Water Co.*, 325; *United States* v. *Congress Construction Co.*, 199; *Chicago Junction Ry. Co.* v. *King*, 222; §§ 6, 11 (see Appeal and Error, 6): *Title Guaranty Co.* v. *General Electric Co.*, 401. Act of April 12, 1900, § 35, 31 Stat. 85 (see Bankruptcy, 6): *Tefft, Weller & Co.* v. *Munsuri*, 114. Act of July 1, 1902, § 10, 32 Stat. 695 (see Jurisdiction, A 9): *Enriquez* v. *Enriquez* (*No. 2*), 127. Act of June 25, 1910, 36 Stat. 838 (see Jurisdiction, D): *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.

MARITIME LAW.—Act of June 26, 1884, § 18, 23 Stat. 57 (see Maritime Law, 2): *Richardson* v. *Harmon*, 96.

NAVIGABLE WATERS.—Act of March 3, 1899, § 10, 30 Stat. 1121 (see Navigable Waters): *Gring* v. *Ives*, 365.

OLEOMARGARINE ACT of August 2, 1886, § 3, 24 Stat. 209 (see Oleomargarine Act): *United States* v. *Barnes*, 513.

PHILIPPINE ISLANDS.—Act of July 1, 1902, § 10, 32 Stat. 695 (see Jurisdiction, A 19): *Enriquez* v. *Enriquez*, 123.

PORTO RICO.—Act of April 12, 1900, 31 Stat. 85 (see Jurisdiction, A 17): *Aran* v. *Zurrinach*, 395.

PUBLIC LANDS.—Rev. Stat., § 2350 and act of April 28, 1904, §§ 1, 4,

33 Stat. 552 (see Public Lands, 2, 5, 6): *United States* v. *Munday*, 175. Act of March 3, 1873, 17 Stat. 607 (§§ 2347–2349, Rev. Stat.) (see Public Lands, 5): *United States* v. *Munday*, 175. Act of June 6, 1900, 31 Stat. 658 (see Public Lands, 5): *Ib.* Act of April 28, 1904, 33 Stat. 552 (see Statutes, A 3): *Ib.*

PUBLIC WORKS.—Act of August 1, 1892, 27 Stat. 340 (see Public Works, 2, 3): *United States* v. *Garbish*, 257. Act of August 13, 1894, 28 Stat. 278, as amended February 24, 1905, 33 Stat. 811 (see Actions, 2): *United States* v. *Congress Construction Co.*, 199.

PURE FOOD AND DRUG ACT.—Act of June 30, 1906, § 4, 34 Stat. 678 (see Pure Food and Drug Act, 2): *United States* v. *Morgan*, 274.

QUARANTINE.—Act of March 3, 1905, § 2, 33 Stat. 1264 (see Cattle Quarantine Act): *United States* v. *Baltimore & Ohio S. W. R. R. Co.*, 8.

RAILWAY BRIDGES.—Acts of July 25, 1866, 14 Stat. 244, and February 24, 1871, 16 Stat. 430 (see Railroads, 1): *Union Pacific R. R.* v. *Mason City &c. R. R.*, 237.

SAFETY APPLIANCE ACT of March 2, 1893, 27 Stat. 531, as amended March 2, 1903, 32 Stat. 943 (see Safety Appliance Acts, 2): *Southern Ry. Co.* v. *United States*, 20.

TARIFF ACT of June 24, 1897, 30 Stat. 159, § 7 (see Customs Law): *United States* v. *Eckstein*, 130.

TERRITORIES.—Act of March 2, 1867, 14 Stat. 426, now § 1889, Rev. Stat. (see Territories, 1, 2): *Berryman* v. *Whitman College*, 334.

WAR REVENUE ACT of June 13, 1896, 30 Stat. 448, and act of June 27, 1902, § 3, 32 Stat. 406 (see Taxes and Taxation, 19): *United States* v. *Fidelity Trust Co.*, 19.

ACTS OF WAR.

See WAR, 4.

AD VALOREM TAX.

See TAXES AND TAXATION, 1.

ADJUDICATION IN BANKRUPTCY.

See BANKRUPTCY, 2, 3.

AGENTS.

See PRINCIPAL AND AGENT.

ALASKA.

See PUBLIC LANDS, 2, 6.

ALIGNMENT OF PARTIES.

See JURISDICTION, C 3, 4;
REMOVAL OF CAUSES, 2, 3.

AMENDMENT OF PROCESS.

See WRIT AND PROCESS, 3.

AMENDMENTS TO CONSTITUTION.

Fifth. See CONSTITUTIONAL LAW, 23, 25;
Fourteenth. See CONSTITUTIONAL LAW, 17, 19, 26, 27, 28, 29;
Fourth. See MALICIOUS PROSECUTION.

AMOUNT IN CONTROVERSY.

See JURISDICTION, A 5–9, 17, 19, 20, 21; B 1, 2.

ANCIENT LAW.

See PRACTICE AND PROCEDURE, 16.

ANCILLARY JURISDICTION.

See JURISDICTION, D.

APPEAL AND ERROR.

1. *Who may appeal.*

One who is not a party to the record and judgment is not entitled to appeal therefrom. *Ex parte Leaf Tobacco Board of Trade*, 578.

2. *Who may appeal.*

The merely general nature and character of the petitioners' interest in this proceeding is not such as to authorize them to assail the action of the court below. This is the more obvious as the act of the court which is assailed has been accepted by the parties to the record. *Ib.*

3. *Action of lower court in respect of parties not reviewable.*

The action of the lower court in refusing to permit the movers to become parties to the record in this case is not susceptible of being reviewed by this court on appeal; or indirectly, under the circumstances of this case, by mandamus. *Ib.*

4. *Maintaining status quo pending appeal.*

Where this court considers it proper the *status quo* will be maintained pending an appeal from the judgment of the Commerce Court sustaining an order of the Interstate Commerce Commission; and

the enforcement of the order in question will be suspended pending the appeal, on the appellant giving a bond for the amount and in the form prescribed by this court. *Omaha & C. B. St. Ry. Co.* v. *Interstate Com. Comm.*, 582.

5. *Reversible error; when denial of motion for judgment not prejudicial.*
Where the effect of the denial of plaintiff's motion for judgment is simply to postpone consideration of the subject until the trial, plaintiff's interests are not prejudiced and there cannot be reversible error. *Kinney* v. *United States Fidelity Co.*, 283.

6. *Supersedeas; essential prerequisite under § 1007, Rev. Stat.*
Section 1007, Rev. Stat., makes the allowance of a writ of error, and the lodgment thereof in the office of the clerk within sixty days after date of judgment, an essential prerequisite to the granting of a supersedeas. Nothing in § 6 or § 11 of the Judiciary Act of 1891 affects the provisions of § 1007, Rev. Stat., in this respect. *Title Guaranty Co.* v. *General Electric Co.*, 401.

7. *Supersedeas; time within which writ of error must be lodged to be basis for.*
An order cannot control a subject to which it cannot lawfully extend; and a stay order, granted to give the defeated party an opportunity to apply to this court for certiorari, does not operate to extend the time within which the writ of error must be lodged in order to be the basis for a supersedeas. *Ib.*

See BANKRUPTCY, 4–8; JURISDICTION; JUDGMENTS AND DECREES, 1; PRACTICE AND PROCEDURE, 4.

APPLIANCES.

See COURTS, 4; SAFETY APPLIANCE ACTS.

ASSESSMENT AND TAXATION.

See CONSTITUTIONAL LAW, 27, 28; PRACTICE AND PROCEDURE, 21; TAXES AND TAXATION.

ASSIGNMENTS.

See CONSTITUTIONAL LAW, 8; PUBLIC LANDS, 4; INSURANCE, 2–5; STATES, 14, 15.

ASSUMPSIT.

See PRINCIPAL AND AGENT, 1, 2.

ATTORNEYS.

See PARTNERSHIP, 4.

BANKRUPTCY.

1. *Actions by bankrupt.*

Until the election of the trustee, the bankrupt may institute and maintain a suit on any cause of action possessed by him. *Johnson* v. *Collier*, 538.

2. *Adjudication; duty of court as to.*

It is the duty of the bankruptcy court to promptly determine the question of adjudication and to proceed with the selection of a trustee and administration of the estate; and it cannot, even if for the benefit of creditors, deny an adjudication and hold jurisdiction over the estate for the purpose of allowing some of the creditors to effect a reorganization and distribution of the property. *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.

3. *Adjudication; denial; effect on jurisdiction.*

With the denial of adjudication the jurisdiction of the bankruptcy court ends and the property becomes subject to ordinary methods and jurisdiction of courts of competent jurisdiction. *Ib.*

4. *Appeal from District Court for Porto Rico; right of.*

There is no appeal to this court from an order disallowing a claim made by the District Court of the United States for Porto Rico sitting as the bankruptcy court. *Tefft, Weller & Co.* v. *Munsuri*, 114.

5. *Appeal; assumption of jurisdiction in cases not provided for by act.*

The fact that no method of review is prescribed by the statute in certain cases does not justify this court in disregarding the statute and assuming jurisdiction where none exists. *Ib.*

6. *Review; modes under Bankruptcy Act not affected by § 35 of act of 1900 relative to Porto Rico.*

The provisions for review of judgment of the Supreme Court of the United States for Porto Rico in § 35 of the act of April 12, 1900, 31 Stat. 85, c. 191, do not affect the exclusive modes of review specifically provided for in the Bankruptcy Act. *Ib.*

7. *Appellate jurisdiction by implication; scope of provisions of § 25 of Bankruptcy Act.*

The express provisions of § 25 of the Bankruptcy Act for the exercise of appellate jurisdiction by implication exclude the right to exer-

cise jurisdiction over a subject not delegated by that or some other statute. *Ib.*

8. *Review; order disallowing claims not reviewable under § 24b of Bankrupty Act.*

Tefft, Weller & Co. v. *Munsuri, ante,* p. 114, followed to effect that the express provisions for review contained in the Bankruptcy Act are controlling, and that review by this court under § 24*b* of an order disallowing claims is not authorized by the act. *Munsuri* v. *Fricker,* 121.

9. *Bankrupt's status as to property; effect of filing petition.*

The bankrupt is not divested of his property by filing a petition in bankruptcy. He is still the owner, holding in trust, pending the appointment and qualification of the trustee, whose title then relates back to the date of adjudication. *Johnson* v. *Collier,* 538.

10. *Controversy within meaning of § 24a of Bankruptcy Act.*

An order of the bankruptcy court disallowing a claim is a step in the proceeding, and not a controversy arising in the proceeding within the meaning of § 24*a*. (*Coder* v. *Arts,* 213 U. S. 234; *Hewit* v. *Berlin Machine Works,* 194 U. S. 296.) *Tefft, Weller & Co.* v. *Munsuri,* 114.

11. *Filing petition; effect of.*

The filing of a petition in bankruptcy is a *caveat* to all the world, and, in effect, an attachment and injunction. (*Mueller* v. *Nugent,* 184 U. S. 1, 14.) *Acme Harvester Co.* v. *Beekman Lumber Co.,* 300.

12. *Immunity of witness under Bankruptcy Act; scope of.*

The provisions in the Bankruptcy Act compelling testimony do not confer an immunity wider than that conferred by the Constitution itself. *Glickstein* v. *United States,* 139.

13. *Immunity afforded by subd. 9 of § 7, act of 1898; prosecution for perjury not within.*

Subdivision 9 of § 7 of the Bankruptcy Act of 1898 and the immunity afforded by it are not applicable to a prosecution for perjury committed by the bankrupt when examined under it. *Ib.*

14. *Trustee; subrogation to rights under liens of judgments confessed by bankrupt prior to filing of petition in bankruptcy; priority of liens over rights of vendor under contract of conditional sale.*

A bankrupt, in Illinois, within a few days of filing a petition in volun-

tary bankruptcy, confessed judgments upon which executions were issued and returned unsatisfied but no actual levy was made; thereafter and before filing the petition he transferred goods in his possession to the vendor thereof, who claimed they had been delivered on conditional sales; the trustee began subrogation proceedings to preserve the liens of the judgments for the benefit of the estate, to which the judgment creditors assented, and also commenced proceedings to compel redelivery of the goods transferred on ground that lien of judgments inured to estate; the trustee had also claimed a right to recover the goods on the ground of unlawful preference; *held*, that under the law of Illinois, delivery to the sheriff of the executions on the judgments operated without levy to create liens upon the property of the judgment debtor within the county. Such liens were paramount to rights in the property possessed by the vendor under contracts of conditional sale. The effect of the subrogation order was to render inoperative as a preference in favor of the judgment creditors the liens obtained through the executions and to preserve such liens as of the date of filing the petition for the benefit of the estate. (*First National Bank* v. *Staake*, 202 U. S. 141.) Liens of execution creditors, as they exist when a petition of involuntary bankruptcy is filed, cannot be subsequently destroyed by acts of the creditors to the prejudice of the estate. As the holder of the goods had not been prejudiced by the proceedings to recover for unlawful preference, the trustee was not barred from asserting the lien of the judgments on the same goods for the benefit of the estate. *Rock Island Plow Co.* v. *Reardon*, 354.

See JURISDICTION, A 13.

BILL OF EXCEPTIONS.

See PRACTICE AND PROCEDURE, 1, 2, 19.

BONDS.

See ACTIONS, 2;
CONTRACTS, 5;
PRINCIPAL AND SURETY.

BRIDGES.

See MARITIME LAW, 5;
RAILROADS, 1, 2, 4.

BURDEN OF PROOF.

See EQUITY.

CARRIERS.

See CATTLE QUARANTINE ACT; CONSTITUTIONAL LAW, 1, 2, 3; INTERSTATE COMMERCE; RAILROADS; STATES, 17.

CASES APPLIED.

Texas & Pacific Railway Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426, applied in *Robinson* v. *Baltimore & Ohio R. R. Co.*, 506.

CASES APPROVED.

Edelstein v. *United States*, 149 Fed. Rep. 636, approved in *Glickstein* v. *United States*, 139.

Wechler v. *United States*, 158 Fed. Rep. 579, approved in *Glickstein* v. *United States*, 139.

CASES DISAPPROVED.

In re Logan, 102 Fed. Rep. 876, disapproved in *Glickstein* v. *United States*, 139.

In re Marx, 102 Fed. Rep. 679, disapproved in *Glickstein* v. *United States*, 139.

CASES DISTINGUISHED.

Connecticut Mutual Ins. Co. v. *Schaefer*, 94 U. S. 457, distinguished in *Grigsby* v. *Russell*, 149.

In re Wood and Henderson, 210 U. S. 246, distinguished in *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.

National Steamship Co. v. *Tugman*, 106 U. S. 118, distinguished in *Anderson* v. *United Realty Co.*, 164.

Old Dominion Steamship Co. v. *Virginia*, 198 U. S. 299, distinguished in *Southern Pacific Co.* v. *Kentucky*, 63.

The Venice, 2 Wall. 258, distinguished in *Herrera* v. *United States*, 558.

Warnock v. *Davis*, 104 U. S. 775, distinguished in *Grigsby* v. *Russell*, 149.

CASES EXPLAINED.

Virginia v. *West Virginia*, 220 U. S. 1, explained in *Virginia* v. *West Virginia*, 17.

CASES FOLLOWED.

Arnett v. *Reade*, 220 U. S. 311, followed in *Mutual Loan Co.* v. *Martell*, 225.

Ayer & Lord Tie Co. v. *Kentucky*, 202 U. S. 409, followed in *Southern Pacific Co.* v. *Kentucky*, 63.

Bacon v. *Walker*, 204 U. S. 311, followed in *Mutual Loan Co.* v. *Martell*, 225.

Chicago, B. & Q. Ry. Co. v. *Drainage Commissioners*, 200 U. S. 591, followed in *Mutual Loan Co.* v. *Martell*, 225.

Chicago, B. & Q. Ry. Co. v. *McGuire*, 219 U. S. 549, followed in *Mutual Loan Co.* v. *Martell*, 225.

Cincinnati &c. Ry. v. *Interstate Commerce Commission*, 206 U. S. 154, followed in *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 541.

Clayton v. *Utah*, 132 U. S. 632, followed in *Berryman* v. *Whitman College*, 334.

Coder v. *Arts*, 213 U. S. 234, followed in *Tefft, Weller & Co.* v. *Munsuri*, 114.

Cummings v. *Chicago*, 188 U. S. 410, followed in *Gring* v. *Ives*, 365.

Daniel v. *Whartenby*, 17 Wall. 639, followed in *Vogt* v. *Graff and Vogt*, 404.

First National Bank v. *Staake*, 202 U. S. 141, followed in *Rock Island Plow Co.* v. *Reardon*, 354.

Garfield v. *Goldsby*, 211 U. S. 249, followed in *Turner* v. *Fisher*, 204.

Hagar v. *Reclamation District*, 111 U. S. 708, followed in *Turner* v. *Fisher*, 204.

Hays v. *Pacific Mail Steamship Co.*, 17 How. 596, followed in *Southern Pacific Co.* v. *Kentucky*, 63.

Herrera v. *United States*, 222 U. S. 558, followed in *Diaz* v. *United States*, 574.

Hewit v. *Berlin Machine Works*, 194 U. S. 296, followed in *Tefft, Weller & Co.* v. *Munsuri*, 114.

Hijo v. *United States*, 194 U. S. 315, followed in *Herrera* v. *United States*, 558.

Hovey v. *Elliott*, 167 U. S. 414, followed in *Turner* v. *Fisher*, 204.

In re Sanford Fork & Tool Co., 160 U. S. 257, followed in *Turner* v. *Fisher*, 204.

Interstate Commerce Commission v. *Diffenbaugh*, 222 U. S. 42, followed in *Union Pacific R. R. Co.* v. *Updike Grain Co.*, 215.

Iowa Central v. *Iowa*, 160 U. S. 393, followed in *Turner* v. *Fisher*, 204.

Johnson v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388, followed in *Martin* v. *West*, 191.

Laurel Hill Cemetery v. *San Francisco*, 216 U. S. 358, followed in *Mutual Loan Co.* v. *Martell*, 225.

Lawrence Mfg. Co. v. *Janesville Cotton Mills*, 138 U. S. 532, followed in *Lewers & Cooke* v. *Atcherly*, 285.

Macfadden v. *United States*, 213 U. S. 288, followed in *Chicago Junction Ry. Co.* v. *King*, 222.

Magoun v. *Illinois Trust Bank*, 170 U. S. 238, followed in *Keeney* v. *New York*, 525.

Mellen v. *Moline Iron Works*, 131 U. S. 352, followed in *Lewers & Cooke* v. *Atcherly*, 285.
Missouri Pacific Ry. Co. v. *Larabee Mills*, 211 U. S. 612, followed in *Southern Ry. Co.* v. *Reid*, 424.
Mueller v. *Nugent*, 184 U. S. 1, followed in *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.
New Orleans Water Works v. *Louisiana Sugar Refining Co.*, 125 U. S. 38, followed in *Interurban Ry. Co.* v. *Olathe*, 187.
Northern Pacific Ry. Co. v. *Washington*, 222 U. S. 370, followed in *Southern Ry. Co.* v. *Reid & Beam*, 444.
Origet v. *United States*, 125 U. S. 243, followed in *Kinney* v. *United States Fidelity Co.*, 283.
Rector v. *Bank*, 200 U. S. 405, followed in *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.
Redfield v. *Windom*, 137 U. S. 636, followed in *Turner* v. *Fisher*, 204.
Red River Cattle Co. v. *Needham*, 137 U. S. 632, followed in *Enriquez* v. *Enriquez (No. 2)*, 127.
Roller v. *Holly*, 176 U. S. 399, followed in *Turner* v. *Fisher*, 204.
Southern Ry. Co. v. *Reid*, 222 U. S. 424, followed in *Southern Ry. Co.* v. *Reid & Beam*, 444.
Southern Ry. Co. v. *United States*, 222 U. S. 20, followed in *Chicago Junction Ry. Co.* v. *King*, 222; *Northern Pacific Ry. Co.* v. *Washington*, 370.
Sperry & Hutchinson v. *Rhodes*, 220 U. S. 502, followed in *Williams* v. *Walsh*, 415.
Tefft, Weller & Co. v. *Munsuri*, 222 U. S. 114, followed in *Munsuri* v. *Fricker*, 121.
The Winnebago, 205 U. S. 354, followed in *Martin* v. *West*, 191.
United States v. *Keitel*, 211 U. S. 370, followed in *United States* v. *Munday*, 175.
Wood v. *United States*, 16 Pet. 342, followed in *United States* v. *Barnes*, 513.

CASES QUALIFIED AND LIMITED.

Armstrong v. *Fernandez*, 208 U. S. 324, qualified and limited in *Tefft, Weller & Co.* v. *Munsuri*, 114.

CATTLE GRAZING.

See PUBLIC LANDS, 7, 8.

CATTLE QUARANTINE ACT.

Carriers affected. Section 2 of act of March 3, 1905, construed.
The provisions of § 2 of the act of March 3, 1905, 33 Stat. 1264, c. 1496, forbidding receipt for transportation of live stock from quarantined

points in any State or Territory into any other State or Territory, do not apply to the receipt of live stock by a connecting carrier for transportation wholly within the State in which it is received, even though the shipment originated at a quarantined point in another State. *United States* v. *Baltimore & Ohio S. W. R. R. Co.*, 8.

CIRCUIT COURTS.

See JURISDICTION, C.

CIRCUIT COURTS OF APPEALS.

See JURISDICTION, A 10, 11, 12.

CIVIL SERVICE EXAMINATIONS.

See FRAUD, 2.

CLAIMS AGAINST THE UNITED STATES.

See JURISDICTION, E; LACHES; PRACTICE AND PROCEDURE, 5, 6; WAR, 8, 9.

CLASSIFICATION FOR REGULATION.

See CONSTITUTIONAL LAW, 8–14, 21; PRACTICE AND PROCEDURE, 22.

CLASSIFICATION FOR TAXATION.

See CONSTITUTIONAL LAW, 7, 16.

CLASSIFICATION OF IMPORTS.

See CUSTOMS LAW, 2.

COAL LANDS.

See PUBLIC LANDS, 2–6.

CODES.

See STATUTES, A 12, 13.

COLLISION OF VESSELS.

See MARITIME LAW, 4, 5.

COMMERCE.

See CATTLE QUARANTINE LAW; CONSTITUTIONAL LAW, 1, 2, 3; INTERSTATE COMMERCE; STATES, 2, 3.

COMMERCE COURT.

See APPEAL AND ERROR, 4.

COMMON LAW.

See LOCAL LAW;
MUNICIPAL CORPORATIONS, 1.

COMMUNITY PROPERTY.

See SALES, 3.

CONDITIONAL SALES.

See BANKRUPTCY, 14.

CONFISCATION.

What amounts to taking of property.

To take away an essential use of property is to take the property itself. *Curtin* v. *Benson*, 78.

See WAR, 3–9.

CONFLICT OF LAWS.

See INTERSTATE COMMERCE, 18, 19, 20;
STATES, 2, 3, 9, 10, 16, 17, 18.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONGRESS, POWERS OF.

See CONSTITUTIONAL LAW, 1, 3; COPYRIGHTS, 3; INTERSTATE COMMERCE, 7, 19; STATES, 4, 10, 16, 17.

CONSTITUTIONAL LAW.

1. *Commerce clause; power of Congress under; dangers which may be obviated.*

The power of Congress under the commerce clause of the Constitution is plenary and competent to protect persons and property moving in interstate commerce from all danger, no matter what the source may be; to that end, Congress may require all vehicles moving on highways of interstate commerce to be so equipped as to avoid danger to persons and property moving in interstate commerce. *Southern Ry. Co.* v. *United States*, 20.

2. *Commerce clause; state statute not invalid as interference with interstate commerce.*

When the interruption of interstate commerce by reason of the en-

forcement of a state statute otherwise constitutional is incidental only, it will not render the statute unconstitutional under the commerce clause of the Constitution. *Martin* v. *West*, 191.

3. *Commerce clause; state statute incidentally affecting use of vessel engaged in interstate commerce, not invalid.*

A state statute which gives a lien upon all vessels, whether domestic or foreign and whether engaged in interstate or intrastate commerce, for injuries committed to persons and property within the State and providing that the lien for non-maritime torts be enforced in the state courts and which is not in conflict with any act of Congress, does not offend the commerce clause of the Constitution because it incidentally affects the use of a vessel engaged in interstate commerce; and so held as to §§ 5953 and 5954 of the Code of the State of Washington. *Ib.*

See STATES, 2, 3.

Contracts. See STATES, 5.

4. *Due process of law; validity of statute of limitations.*

A state statute of limitations allowing only a little more than a year for the institution of a suit to recover his personal property by a party who has not been heard from for fourteen years and for whose property a receiver has been appointed is not unconstitutional as depriving him of his property without due process of law; and so held as to the provisions to that effect of the Revised Laws of Massachusetts, c. 144, for distribution of estates of persons not heard of for fourteen years and presumably dead. *Blinn* v. *Nelson*, 1.

5. *Due process of law; legislation for maintenance of social order; what constitutes.*

Legislation reasonably adapted to the maintenance of social order, affording hearing before judgment, and not affirmatively forbidden by any constitutional provision, does not deny due process of law. *City of Chicago* v. *Sturges*, 313.

6. *Due process of law; equal protection of the law; validity of the mob and riot indemnity law of Illinois.*

The act of Illinois of 1887 indemnifying owners of property for damages by mobs and riots is not unconstitutional as depriving cities of their property without due process of law because liability is imposed irrespective of the power of the city to have prevented the violence; nor is it unconstitutional as denying equal protec-

tion of the law because it discriminates between cities and unincorporated subdivisions of a county. *Ib.*

7. *Due process of law; equal protection of the law; validity of New York transfer tax law of 1896.*

The statute of New York of 1896, providing for a transfer tax on property passing by deed of a resident intended to take effect in possession or enjoyment at or after the death of the grantor, is not unconstitutional as taking property without due process of law nor does it deny the equal protection of the law by arbitrary classification of the subject-matter or by different rates of taxation depending on the relationship of the beneficiaries to the grantor. *Keeney* v. *New York*, 525.

8. *Due process of law; equal protection of the laws; validity of Massachusetts statute regulating assignments of future wages.*

The statute of Massachusetts making invalid assignments for security for debts of less than $200 of wages to be earned unless accepted in writing by the employer, consented to by the wife of the assignor, and filed in a public office, is not unconstitutional as depriving the borrower or the lender of his property without due process of law, nor is it unconstitutional, as denying equal protection of the law, because certain classes of financial institutions are exempted from its provisions. It is a legitimate exercise of the police power and there is a basis for the classification. *Mutual Loan Co.* v. *Martell*, 225.

See Infra, 27, 29.

9. *Equal protection of the law; recognition of degrees of evil.*

Legislation may recognize degrees of evil without denying equal protection of the laws. *Mutual Loan Co.* v. *Martell*, 225.

10. *Equal protection of the laws; classification within.*

Whether a state statute denies equal protection of the laws by reason of classification depends upon whether there is a basis for the classification. *Finley* v. *California*, 28.

11. *Equal protection of the laws; classification of punishment for crimes within.*

There is a proper basis for classification of punishment for crimes between convicts serving life terms in the state prison and convicts serving lesser terms. *Ib.*

12. *Equal protection of the laws; classification of punishment for crime; validity of § 246 of California Penal Code.*

Section 246 of the Penal Code of California inflicting the death penalty

for assaults with intent to kill committed by life term convicts in the state prison is not unconstitutional under the equal protection clause of the Fourteenth Amendment because its provisions are not applicable to convicts serving lesser terms. *Ib.*

13. *Equal protection of the laws; classification not offensive to provision.*
Whether or not a classification merely between all corporations and partnerships and individuals offends the equal protection clause, a classification of corporations operating railroads and individuals does not offend that provision of the Constitution. *Aluminum Co.* v. *Ramsey*, 251.

14. *Equal protection of the laws; classification not offensive to provision.*
Although the state court may have applied the statute to plaintiff in error merely as a corporation, if the record shows that it is a corporation of a kind properly classified by the statute and there is equality within that class, the statute will not be held invalid as repugnant to the equal protection clause of the Constitution. *Ib.*

15. *Equal protection of the law; validity of graduated tax on transfers.*
A State may impose a graduated tax on transfers of personal property by instrument taking effect on the grantor's death without violating the equal protection clause. *Keeney* v. *New York*, 525.

16. *Equal protection of the law; differences to justify classification.*
While there can be no arbitrary classification without denying equal protection of the law, there need not be great or conspicuous differences in order to justify a classification. *Ib.*

17. *Equal protection of the law; classification in taxation.*
The Fourteenth Amendment does not require a State to tax all transfers because it taxes some transfers. *Ib.*

18. *Equal protection of the law; exceptions in police statute; validity of Kansas black powder law.*
The Kansas statute regulating sales of black powder is not unconstitutional as denying equal protection of the law because it excepts from its operation sales made under existing contracts; but whether it offends the commerce clause cannot be determined in a suit in which it does not appear that the party raising the question was affected in that respect. *Williams* v. *Walsh*, 415.

19. *Equal protection of the law; application of Fourteenth Amendment to statutory changes.*
A classification as to time that is not arbitrary is not repugnant to the Constitution. The Fourteenth Amentment does not forbid

statutory changes to have a beginning and thus discriminate between rights of an earlier and later time. (*Sperry & Hutchinson* v. *Rhodes*, 220 U. S. 502.) *Ib.*

20. *Equal protection of the law; police statute; validity of exceptions in.*
A state police statute regulating sales, otherwise constitutional, is not unconstitutional under the equal protection clause because it excepts from its operation sales made under existing contracts. *Ib.*

21. *Equal protection of the law; validity of classification between cities and unincorporated subdivisions of a county.*
Equal protection of the law is not denied where the classification is not so unreasonable and extravagant as to be merely an arbitrary mandate. A classification between cities and unincorporated subdivisions of a county is a reasonable one within the equal protection clause of the Fourteenth Amendment. *City of Chicago* v. *Sturges*, 313.

See Supra, 6, 7, 8;
Infra, 29;
STATES, 1.

22. *Fallibility of.*
Constitutional law, like other mortal contrivances, has to take some chances of occasionally inflicting injustice in extraordinary cases. *Blinn* v. *Nelson*, 1.

Fourth Amendment. See MALICIOUS PROSECUTION.

23. *Self-incrimination; measure of protection provided by Fifth Amendment.*
The constitutional guarantee of the Fifth Amendment does not deprive the law-making authority of the power to compel the giving of testimony, even though the testimony when given may serve to incriminate the witness provided complete immunity be accorded. *Glickstein* v. *United States*, 139.

24. *Self-incrimination; punishment for perjury not within immunity.*
The sanction of an oath and imposition of punishment for false swearing are inherent parts of the power to compel giving testimony and are prohibited by immunity as to self-incrimination. *Ib.*

25. *Self-incrimination; immunity not a license to commit perjury.*
The immunity afforded by the Fifth Amendment relates to the past; it is not a license to the person testifying to commit perjury either

under the provisions as to the giving of testimony in § 860, Rev. Stat., or of the Bankruptcy Act of 1898. *Ib.*

26. *States; effect of Fourteenth Amendment on power over local officer.*
The Fourteenth Amendment does not deprive a State of the power to determine what duties may be performed by local officers, nor whether they shall be appointed, or elected by the people. *Soliah* v. *Heskin*, 522.

27. *States; effect of Fourteenth Amendment to invalidate act providing for creation of drains and assessments therefor.*
The Fourteenth Amendment does not invalidate an act authorizing an appointed board to determine whether a proposed drain will be of public benefit, and to create a drainage district consisting of land which it decides will be benefited by such drain, and to make special assessments accordingly, if, as in this case, notice is given and an opportunity to be heard afforded the landowner before the assessment becomes a lien against his property. *Ib.*

28. *States; effect of Fourteenth Amendment to deprive State of taxing power.*
The Fourteenth Amendment does not deprive a State of the power to compel a township, as one of its political subdivisions, to levy and collect taxes for the purpose of paying the amount assessed against such township for the public benefits accruing from the construction of the drain. *Ib.*

29. *States; effect of Fourteenth Amendment on taxing powers of.*
The Fourteenth Amendment does not diminish the taxing power of the State or deprive the State of the power to select subjects for taxation, but only requires that the citizen be given opportunity to be heard on questions of liability and value, and be not arbitrarily denied equal protection. *Keeney* v. *New York*, 525.
See STATES.

30. *Generally; test of constitutionality of power.*
Whether a power is within constitutional limits is to be determined by what can be done under it, not what may be done. *Curtin* v. *Benson*, 78.
See SAFETY APPLIANCE ACTS, 1.

CONSTRUCTION OF STATUTES.

See STATUTES, A.

CONTRACTS.

1. *Construction; well known conditions considered.*
A contract will be read in the light of well known conditions; a contract made in Porto Rico to grind sugar cane will be presumed to be a contract to grind in the grinding season. *Porto Rico Sugar Co.* v. *Lorenzo*, 481.

2. *Government; quære as to parties.*
Quære, whether where the contractor is given a right to extension of time if the Secretary of Navy approves, the Secretary is to be regarded as a third party or as representing the United States. *United States* v. *McMullen*, 460.

3. *Government; annulling; meaning of.*
Annulling a contract by the Government does not mean in this case that the Government rescinded or avoided it, but that it would proceed no further with the contractor and would charge him with the difference in cost caused by his default. *Ib.*

4. *Government; reletting after default; presumption as to reasonableness of price.*
When the Government relets a contract after default, the price for which it is relet must be assumed to be reasonable in absence of evidence to the contrary, and this is especially so when the difference is less than the sum stipulated as liquidated damages. *Ib.*

5. *Government; reletting; effect on sureties.*
When the Government relets a contract, the sureties are not relieved because there are differences in the terms which diminish the cost of the work as relet. *Ib.*

6. *Government; want of certainty and mutuality.*
A government contract is not unenforcible for want of certainty and mutuality because it allows changes by the United States, subject to provisions for change of compensation where proper. *Ib.*

7. *Government; amount of work dependent upon appropriations.*
The amount of work to be done under a government contract depends upon the appropriations made by Congress for carrying on the work, and this is implied whether expressed in the contract or not. *Ib.*

8. *Government; execution; admission by pleading.*
Where the answer does not deny that the contract was signed by the

United States and the contract declares that it is, and it is signed by the Chief of Bureau of Yards and Docks, there is admission by implication that it was signed by the United States and is sufficient. *Ib.*

9. *Evidence to establish time of performance.*
When the grinding season is in a particular locality may be established by parol evidence. *Porto Rico Sugar Co.* v. *Lorenzo*, 481.

10. *For sale of real estate; sufficiency under statute of frauds.*
The contract to sell involved in this case being clear enough to indicate to lawyer and layman the purchaser, the seller, and land and the terms, it satisfies the statute of frauds, Code, District of Columbia, § 1117. *Lenman* v. *Jones*, 51.

11. *Mail service contracts; estoppel of contractor to claim misapprehensions as to requirements.*
A mail service contractor cannot claim that he accepted a contract under misapprehension when between the time of his proposal and its acceptance he took a temporary contract for carriage of the identical mails contracted for. *Huse* v. *United States*, 496.

12. *Mail service contracts; delivery of mails, service contemplated.*
A contract for delivery of all mails at Union Station, Omaha, was properly construed by the Postmaster General as including mail delivered by three railroads not in the schedule, it appearing, however, that the mail so delivered had formerly been delivered by one of the railroads mentioned in the schedule and were included in a route specified in the contract. *Ib.*

13. *Mail service; cancellation by Government; offsetting claim for balance due against damages sustained by Government; practice.*
A mail service contractor whose contract had been cancelled for failure to perform sued in the Court of Claims for balance due and for damages for cancellation; that court held he was not entitled to judgment for the balance due because it appeared that the contract was properly cancelled and that the Government had sustained damages in excess of the balance due. In this court, *held:* that as the objection that the balance due could not, in the absence of a counterclaim pleading, be offset against the damages sustained by the Government had not been raised in the Court of Claims, that court rightly offset it, and the objection cannot be raised for the first time on appeal in this court. *Ib.*

14. *Breach; damages and offsets; practice in Court of Claims; quære as to.*
Quære: Whether the rules of practice in the Court of Claims would not permit the offset to be made in absence of any pleading setting up counterclaim or offset. *Ib.*

15. *Option; agreement to sell as.*
An agreement to sell at a price paid with right of redemption within a specified period with further agreement not to redeem if an additional sum be paid within that period simply amounts to an option. *Sandoval* v. *Randolph*, 161.

16. *Performance; excuses for non-performance.*
Nothing in the contract under consideration in this case takes it out of the ordinary rule that performance of an absolute undertaking is not excused by such occurrences as breaking of machinery, etc. *Porto Rico Sugar Co.* v. *Lorenzo*, 481.

17. *Specific performance of contract of sale; right of purchaser from vendee.*
One who purchases from the vendee before completion of the contract to sell, not only the property but all rights of the vendee connected therewith, becomes the equitable owner of the property to the same extent as the original vendee and can compel specific performance of the original contract. *Lenman* v. *Jones*, 51.

18. *Specific performance of contract of sale; parties to suit to compel.*
The original vendee against whom no relief is asked and who has to the extent of his interest complied with the contract is not a necessary party to a suit brought by the subvendee against the original vendor to compel specific performance. *Ib.*

19. *Specific performance; effect of misunderstanding by vendor as to absolute nature of contract.*
The vendor is not relieved of a contract to sell, absolute as to him, because he thought it gave the purchaser an option, but did not require him, to purchase. *Ib.*

20. *Specific performance; effect of ignorance by vendor of identity of real vendee.*
In the absence of fraud, ignorance of who the real vendee is does not relieve the vendor from specific performance of a contract to sell real estate. *Ib.*

See COURTS, 3;
JURISDICTION, A 5, 6, 7, 14, 15;
PUBLIC WORKS, 1;
STATES, 5.

CONTROVERSIES BETWEEN STATES.

See STATES, 6, 7.

COPYRIGHTS.

1. *Infringement; exhibition of moving pictures based on author's work as dramatization thereof.*

An exhibition of a series of photographs of persons and things, arranged on films as moving pictures and so depicting the principal scenes of an author's work as to tell the story is a dramatization of such work, and the person producing the films and offering them for sale for exhibitions, even if not himself exhibiting them, infringes the copyright of the author under Rev. Stat., § 4952, amended by the act of March 3, 1891, c. 565, 26 Stat. 1106. *Kalem Co.* v. *Harper Brothers*, 55.

2. *Infringement; quære as to medium employed in such reproduction.*

Quære: Whether there would be infringement if the illusion of motion were produced from paintings instead of photographs of real persons, and also *quære* whether such photographs can be copyrighted. *Ib.*

3. *Power of Congress under Constitution; validity of § 4952, Rev. Stat., as amended.*

Rev. Stat., § 4952, as amended by the act of March 3, 1891, c. 565, 26 Stat. 1106, confines itself to a well-known form of reproduction and does not exceed the power given to Congress under Art. I, § 8, cl. 8 of the Constitution, to secure to authors the exclusive right to their writings for a limited period. *Ib.*

CORPORATIONS.

See CONSTITUTIONAL LAW, 13, 14; TAXES AND TAXATION, 9;
FEDERAL QUESTION, 2; TERRITORIES, 1, 2.

COURT OF CLAIMS.

See CONTRACTS, 14;
JURISDICTION, E;
PRACTICE AND PROCEDURE, 5, 6.

COURTS.

1. *Federal; when bound by state court's construction of state statute.*

An act of the State of Florida, incorporating a railroad company and granting it aid, having been held unconstitutional by the highest court of that State because the journal showed that it was an act

to incorporate only, and only one subject can be embraced in one act, the Federal courts are bound to follow that decision, and to hold that Trustees of the Internal Improvement Fund had no power to convey land under that act, and that the grantees have no title to any of the lands claimed thereunder. *Peters* v. *Broward*, 483.

2. *Federal; when bound by decision of state court rendered subsequent to accrual of rights under statute involved.*

Although the decision of the state court holding a particular law to be unconstitutional may not have been rendered until after rights based thereon had arisen, if the highest court simply followed a rule laid down before such rights had arisen, the decision in the latter case is binding upon the Federal courts. *Ib.*

3. *Foreign contracts and torts; assumption as to existence of liability.*

In dealing with rudimentary contracts, or torts made or committed abroad, courts may assume a liability to exist if nothing to the contrary appears, but they cannot assume that the rights and liabilities are fixed and measured in the same manner in foreign countries as they are in this. *Cuba R. R. Co.* v. *Crosby*, 473.

4. *Foreign laws; presumption as to; necessity for proof of.*

A trial court of the United States cannot presume that the same obligation rests upon an employer in Cuba as in this country to repair defects in machinery called to his attention, or in case of failure to repair to be deprived of the fellow-servants defense. Such a rule of law, if existent in a foreign jurisdiction, must be proved. *Ib.*

5. *Foreign suitors; limitation of hospitality to.*

The extension of hospitality of our courts to foreign suitors must not be made a cover for injustice to defendants of whom they may be able to lay hold. *Ib.*

See BANKRUPTCY, 2, 3;
FEDERAL QUESTION, 3;
INTERSTATE COMMERCE, 13;
INTERSTATE COMMERCE COMMISSION;
JUDICIAL NOTICE;
JURISDICTION;
MARITIME LAW, 6;
PRACTICE AND PROCEDURE;
REMEDIES, 4;
REMOVAL OF CAUSES;
TAXES AND TAXATION, 7.

CREEK INDIANS.

See INDIANS, 1;
MANDAMUS, 3.

CRIMINAL LAW.

1. *Notice; when manifestly not jurisdictional.*

Where a statute provides for notice in one case and permits prosecutions without notice in another case it shows that there was no intent to make notice jurisdictional. *United States* v. *Morgan*, 274.

2. *Relation of statutory provisions to offense charged.*

Congress will not be supposed to make the same offense indictable and punishable under either of two distinct provisions under which the procedure and the penalties are different. *United States* v. *Stever*, 167.

3. *Application of §§ 3894, 5480, Rev. Stat.*

Sections 3894 and 5480, Rev. Stat., each apply to different offenses and are to be construed as legislation *in pari materia*. *Ib.*

4. *Limitation of application of § 3894, Rev. Stat.*

Section 3894, Rev. Stat., relates particularly to lottery schemes, and the general words "concerning schemes devised for the purpose of obtaining money or property by false pretenses" are limited to schemes having a similitude to lotteries and other like schemes particularly described and do not extend to the general schemes to defraud covered by § 5480, Rev. Stat. *Ib.*

See BANKRUPTCY, 13;
CONSTITUTIONAL LAW, 11, 12, 24, 25;
FRAUD;
PURE FOOD AND DRUG ACT;
STATUTES, A 10, 11, 15, 16.

CUBA.

See LOCAL LAW (CUBA);
WAR, 3.

CUSTOMS LAW.

1. *Similitude clause in act of 1897; what within.*

Section 7 of the Dingley Tariff Act of June 24, 1897, c. 11, 30 Stat. 159, known as the similitude clause, does not require that there shall be similarity of material, quality, texture and use in all four particulars, but a substantial similarity in one particular may be adequate to classify an article thereunder. *United States* v. *Eckstein*, 130.

2. *Similitude clause; classification of imitation horsehair under.*

Imitation horsehair was properly classified under the similitude clause with cotton yarn enumerated in paragraph 302 of the Tariff Act

instead of with silk yarn under paragraph 385, there being a substantial similitude with the former both as to material and use, even if not as to quality or texture. *Ib.*

DAMAGES.

See LIBEL;
MUNICIPAL CORPORATIONS, 3;
PRINCIPAL AND AGENT, 1.

DECREES.

See JUDGMENTS AND DECREES.

DEFENSES.

See MANDAMUS, 3.

DELEGATION OF POWER.

See GOVERNMENTAL POWERS AND FUNCTIONS, 3.

DEPARTMENT OF AGRICULTURE.

See PURE FOOD AND DRUG ACT, 1, 2.

DINGLEY TARIFF ACT.

See CUSTOMS LAW.

DISTRICT ATTORNEYS.

See PURE FOOD AND DRUG ACT, 2.

DISTRICT COURTS.

See JURISDICTION, A 17, 18; D;
MARITIME LAW, 3.

DISTRICT OF COLUMBIA.

See CONTRACTS, 10;
ESTATES OF DECEDENTS, 1.

DIVERSITY OF CITIZENSHIP.

See JURISDICTION, C 3, 4.

DRAMATIZATION.

See COPYRIGHTS, 1, 2.

DUE PROCESS OF LAW.
See CONSTITUTIONAL LAW, 4–8;
INDIANS, 1, 2.

DUTIES ON IMPORTS.
See CUSTOMS LAW.

EIGHT-HOUR LAW.
See PUBLIC WORKS, 2, 3.

EMPLOYER AND EMPLOYÉ.
See COURTS, 4.

ENEMIES.
See WAR, 2, 3.

ENEMY'S COUNTRY.
See WAR, 1, 3.

ENEMY'S PROPERTY.
See WAR, 4, 5, 6.

ENROLLMENT OF INDIANS.
See INDIANS, 1, 2;
MANDAMUS.

EQUITY.
Right to relief in; onus of establishing want of right.
While one must come into equity with clean hands, a defendant invoking the rule on the ground that plaintiff is praying for relief with an improper object in view must establish that fact. *Curtin* v. *Benson*, 78.
See JUDGMENTS AND DECREES, 2;
PARTNERSHIP, 3.

EQUAL PROTECTION OF THE LAWS.
See CONSTITUTIONAL LAW, 6, 7, 8, 9–21;
STATES, 1.

EQUITABLE TITLES.
See WILLS, 1, 2.

ESTATES.

See TAXES AND TAXATION, 19.

ESTATES OF DECEDENTS.

1. *Rule in Shelley's case as rule of property; question for court.*

The rule in Shelley's case is a rule of property in the District of Columbia, and the question for this court to determine is not whether it has or has not a legal foundation, or is or is not a useful rule of property, but whether it applies to the case in controversy. *Vogt* v. *Graff and Vogt*, 404.

2. *Rule in Shelley's case; when not applicable.*

Where the testator directs that on the sale of his real estate the proceeds be divided and paid over to his heirs at once, except the share of a specified heir which shall be paid to trustees to be by them invested, the income thereon to be paid to such heir, the principal to be paid to his heirs after his death, the application of the rule in Shelley's case would destroy the radical distinctions intended by the testator, and the rule does not apply. *Ib.*

3. *Rule in Shelley's case; intention of testator paramount.*

Notwithstanding the peremptory force of the rule in Shelley's case, where there are explanatory and qualifying expressions showing a clear intention of the testator to the contrary, the rule must yield and the intention prevail. (*Daniel* v. *Whartenby*; 17 Wall. 369.) *Ib.*

4. *Rule in Shelley's case; condition as to quality of estates.*

A condition of the rule in Shelley's case is that the particular estate and the estate in remainder must be of the same quality, both legal or both equitable, and where the former is equitable and the latter is legal, the rule does not apply and the two estates do not merge. *Ib.*

5. *Remainder; quære as to character.*

Quære: Whether in the case at bar the estate in remainder is legal or equitable. *Ib.*

6. *Rule in Shelley's case; quære as to personalty.*

Quære: Whether the rule in Shelley's case is applicable to personal property. *Ib.*

See CONSTITUTIONAL LAW, 7, 15, 17;
JUDGMENTS AND DECREES, 3;
WILLS.

ESTOPPEL.

See CONTRACTS, 11;
SALES, 2, 3.

EVIDENCE.

Limitation of, to purpose for which introduced.

Evidence, inadmissible generally but admitted by the court below for a particular purpose, cannot be extended by this court beyond the limited purpose of its introduction. *Curtin* v. *Benson*, 78.

See CONSTITUTIONAL LAW, 23–25;
CONTRACTS, 9;
COURTS, 4;
INTERSTATE COMMERCE, 3, 10, 11;
JURISDICTION, A 8.

EXCEPTIONS.

See PRACTICE AND PROCEDURE, 3, 4.

EXCISES.

See TAXES AND TAXATION, 1.

EXECUTORS AND ADMINISTRATORS.

See PARTNERSHIP, 7.

EXEMPTION FROM TAXATION.

See TERRITORIES, 1, 2;
TAXES AND TAXATION, 2.

FACTS.

See INTERSTATE COMMERCE COMMISSION, 1, 2;
PRACTICE AND PROCEDURE, 5, 6, 7.

FEDERAL COURTS.

See COURTS, 1, 2;
FEDERAL QUESTION, 3.

FEDERAL QUESTION.

1. *Frivolous; when not affording basis for jurisdiction.*

In this case the Federal question relied upon is so absolutely without merit, and the grounds are so frivolous, as not to afford a basis for exercise of jurisdiction, and the writ of error is dismissed. *Gring* v. *Ives*, 365.

2. *Involution in application to foreign corporations of state statute increasing liability.*

Although a statute increasing the liability of corporations may, as to corporations of the State, be an exercise of the reserved power to alter, amend and repeal, the application of that principle as to foreign corporations depends on many considerations and involves Federal questions. *Aluminum Co.* v. *Ramsey,* 251.

3. *Validity of state law under state constitution not a Federal question.*

Whether a particular state law has been passed by the legislature in such manner as to become a valid law under the state constitution is a state and not a Federal question, and Federal courts must follow the adjudications of the state court. *Peters* v. *Broward,* 483.

See JURISDICTION, A 10, 11, 12, 14.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 23, 25.

FINDINGS OF FACT.

See INTERSTATE COMMERCE COMMISSION, 1, 2;
PRACTICE AND PROCEDURE, 5, 6, 7.

FOREIGN CORPORATIONS.

See FEDERAL QUESTION, 2.

FOREIGN LAWS.

See COURTS, 3, 4.

FOREIGN SUITORS.

See COURTS, 5.

FORGERY.

See FRAUD, 2.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW, 17, 19, 26–29.

FOURTH AMENDMENT.

See MALICIOUS PROSECUTION.

FRAUD.

1. *Defrauding United States; essentials of crime.*

It is not essential to charge or prove an actual financial or property

loss to make a case of defrauding the United States. *United States* v. *Plyler*, 15.

2. *Defrauding United States; offenses within § 5418, Rev. Stat.; forging Civil Service vouchers.*

Section 5418, Rev. Stat., prohibits the forging of written vouchers required upon examination by the Civil Service Commission of the United States, and presenting such vouchers to the Commissioners. *Ib.*

See CRIMINAL LAW, 4.

FRIVOLOUS QUESTION.

See FEDERAL QUESTION, 1;
JURISDICTION, A 18;
REMOVAL OF CAUSES, 3.

GOVERNMENTAL POWERS AND FUNCTIONS.

1. *Power of legislature to impose obligations and responsibilities otherwise non-existent.*

The general principles of law that there is no individual liability for an act which ordinary human care and foresight could not guard against and that loss for causes purely accidental must rest where it falls, are subject to the legislative power which, in the absence of organic restraint, may, for the general welfare, impose obligations and responsibilities otherwise non-existent. *City of Chicago* v. *Sturges*, 313.

2. *Duty of government to protect life, liberty and property.*

Primarily government exists for the maintenance of social order and is under the obligation to protect life, liberty and property against the careless and evil-minded. *Ib.*

3. *Delegation of legislative power; what amounts to.*

A requirement by the legislature that illuminating oils must be safe, pure, and afford a satisfactory light, establishes a sufficient primary standard, and remitting to the proper state board the establishment of rules and regulations to determine what oils measure up to those standards does not amount to a delegation of legislative power. *Red "C" Oil Co.* v. *North Carolina*, 380.

See CONSTITUTIONAL LAW, 30;
PUBLIC LANDS, 1;
STATES.

GOVERNMENT CONTRACTS.

See ACTIONS, 2;
CONTRACTS, 2–8.

GRAIN ELEVATORS.
See INTERSTATE COMMERCE, 2, 5, 7.

HABEAS CORPUS.
Functions of writ.
The writ of *habeas corpus* cannot be made to perform the function of a writ of error, nor can it be made the means of obtaining a new trial. *Williams* v. *Walsh*, 415.

HARLAN, J., IN MEMORIAM.
See P. V, *ante.*

HAWAII.
See JUDGMENTS AND DECREES, 1.

HORSEHAIR.
See CUSTOMS LAW, 2.

HOURS OF LABOR.
See PUBLIC WORKS, 2, 3;
STATES, 16, 17.

IGNORANCE OF THE LAW.
See PLEADING.

ILLUMINATING OILS.
See GOVERNMENTAL POWERS AND FUNCTIONS, 3.

IMITATION HORSEHAIR.
See CUSTOMS LAW, 2.

IMMUNITY OF WITNESSES.
See BANKRUPTCY, 12, 13;
CONSTITUTIONAL LAW, 24, 25.

IMPAIRMENT OF CONTRACT OBLIGATIONS.
See JURISDICTION, A 5, 6, 14, 15.

IMPORTS.
See CUSTOMS LAW.

INDIANS.
1. *Enrollment; rights acquired by; prerequisites to deprivation of.*
Where, under the provisions of acts of Congress, and after a hearing, the names of relators were duly entered as Creek Freedmen by

blood on the rolls made and approved by the Secretary of the Interior, rights were acquired of which the freedmen could not be deprived without that character of notice and opportunity to be heard essential to due process of law. (*Garfield* v. *Goldsby*, 211 U. S. 249.) *Turner* v. *Fisher*, 204.

2. *Enrollment; removal from; sufficiency of notice of hearing.*

Notice to the attorney of such freedmen, given a few hours before the hearing of a motion to strike their names, on the ground that their enrollment had been secured by perjury, was not such notice as afforded due process. (*Roller* v. *Holly*, 176 U. S. 399, 409; *Hagar* v. *Reclamation Dist.*, 111 U. S. 708; *Iowa Central* v. *Iowa*, 160 U. S. 393; *Hovey* v. *Elliott*, 167 U. S. 414.) *Ib.*

See MANDAMUS, 2, 3, 5.

INFRINGEMENT OF COPYRIGHT.

See COPYRIGHTS, 1, 2.

INJUNCTION.

See JURISDICTION, D.

INSPECTION CHARGES.

See TAXES AND TAXATION, 3–6.

INSURANCE.

1. *Condition as to avoidance of policy on non-payment of premiums; effect of.*

A condition in an insurance policy that it shall be void for non-payment of premiums means only that it shall be voidable at option of the company. *Grigsby* v. *Russell*. 149.

2. *Assignment of policy not within rule as to insurable interest.*

The rule of public policy that forbids the taking out of insurance by one on the life of another in which he has no insurable interest does not apply to the assignment by the insured of a perfectly valid policy to one not having an insurable interest. *Ib.*

3. *Assignment of policy, validity of.*

In this case, *held*, that the assignment by the insured of a perfectly valid policy to one not having any insurable interest but who paid a consideration therefor and afterwards paid the premiums thereon was valid and the assignee was entitled to the proceeds from the insurance company as against the heirs of the deceased. *Ib.*

4. *Insurable interest; effect of cessation of, on validity of policy.*
A valid policy of insurance is not avoided by a cessation of insurable interest even as against the insurer unless so provided by the policy itself. *Conn. Mut. Ins. Co.* v. *Schaefer*, 94 U. S. 457; *Warnock* v. *Davis*, 104 U. S. 775, distinguished. *Ib.*

5. *Assignment of policy; rights of assignee as against those of insured's administrator.*
Where there is no rule of law against paying to an assignee who has no insurable interest in the life of the insured, and the company waives a clause in the policy requiring proof of interest, the rights of the assignee are not diminished by such clause as against the insured's administrator. *Ib.*

INTERSTATE COMMERCE.

1. *What constitutes.*
A train moving and carrying freight between two points in the same State, but which is hauling freight between points one of which is within and the other without the State, or hauling it through the State between points both without the State, is engaged in interstate commerce and subject to the laws of Congress enacted in regard thereto. (*Southern Railway Co.* v. *United States*, 222 U. S. 20.) *Northern Pacific Ry. Co.* v. *Washington*, 370.

2. *Discriminations; rebates; allowance to owners of elevators handling own grain, held not illegal.*
Contracts made by various railroads for elevation expenses of grain at points of transshipment at rates not exceeding those fixed by the Commission as reasonable, *held* not to be illegal discriminations or rebates when paid to owners of elevators on their own grain although such owners perform services other than those paid for at the same time to their own advantage. *Interstate Commerce Commission* v. *Diffenbaugh*, 42.

3. *Evidence; reports of Commission as.*
Section 14 of the Act to Regulate Commerce, making decisions of the Interstate Commerce Commission as published in the official reports competent evidence, does not relieve a party relying on a decision from putting it in evidence—or require courts to take judicial notice thereof—the statute relieves from expense and inconvenience in connection with producing evidence, but it does not otherwise change the rules of evidence. *Robinson* v. *Baltimore & Ohio R. R. Co.*, 506.

4. *Preferences; when apparently fair rule held unreasonable and unfair.*
A rule apparently fair on its face and reasonable in its terms may, in fact, be unfair and unreasonable if it operates so as to give one an advantage of which another similarly situated cannot avail. *Union Pacific R. R.* v. *Updike Grain Co.*, 215.

5. *Preferences; unreasonable discrimination by carrier in compensating for elevation of grain.*
In this case *held*, that the Union Pacific Railroad Company could not refuse to pay the owner of an elevator located on other railroads compensation for elevating grain similar to that paid to owners of elevators located on its own railroad on account of failure to return cars within an arbitrary and unreasonable time fixed by the Union Pacific; but also *held* that such cars should be returned within a reasonable time in order to entitle the parties rendering service to compensation therefor. *Ib.*

6. *Rates; compensation contemplated by Interstate Commerce Act; power of Commission.*
The Interstate Commerce Act does not attempt to equalize fortune, opportunities or abilities; it contemplates payment of reasonable compensation by carriers for services rendered, and instrumentalities furnished, by owners of property transported, the only power of the Commission being to determine the maximum of such compensation. *Interstate Commerce Commission* v. *Diffenbaugh*, 42.

7. *Rates; compensation of shippers for elevation of grain; right of carrier to accord.*
Interstate Commerce Commission v. *Diffenbaugh, ante*, p. 42, followed to effect that under the Interstate Commerce Law, as amended by the act of June 29, 1906, c. 3591, 34 Stat. 584, 590, elevation of grain is included in transportation, and, subject to the power of the Commission to determine the reasonableness of the payments, carriers can compensate owners of grain in transit for elevation services rendered in connection therewith. *Union Pacific R. R.* v. *Updike Grain Co.*, 215.

8. *Rates; compensation by carrier for services rendered in transportation; right of carrier to withhold.*
Although a carrier may have had an ulterior motive in establishing a general rate of compensation for services rendered to it in connection with goods in transit, the real consideration is the service rendered; and even if the carrier does not realize the desired

benefit it cannot deprive one actually rendering the service of the compensation on the ground of non-compliance with regulations of an association of which the carrier is a member and over which the party rendering the service has no control. *Ib.*

9. *Same.*
A carrier must treat all alike. It cannot pay one shipper for services rendered to his goods in transit, and, by enforcing an arbitrary rule, deprive another shipper rendering similar services of compensation therefor. *Ib.*

10. *Rates; reasonableness; proof of.*
Reasonableness of railroad rates cannot be proved by categorical answers like those given in regard to value of articles of merchandise; too many elements are involved which require consideration. *Interstate Com. Comm.* v. *Union Pacific Ry. Co.*, 541.

11. *Rates; reasonableness; quære as to presumption of.*
Quære: Whether the maintenance of an admittedly low rate for a long time raises a presumption of reasonableness because the carriers realized a profit thereon. *Ib.*

12. *Rate regulation; scope of authority conferred by Act to Regulate Commerce.*
By the Act to Regulate Commerce, Congress has provided a system for establishing, maintaining, and altering rate schedules and of redressing injuries, and committed to a single tribunal authority to investigate complaints, enforce conformity to prescribed standards, and order reparation to injured parties for non-conformity with those standards. *Robinson* v. *Baltimore & Ohio R. R. Co.*, 506.

13. *Rates; actions for reparation; when maintainable.*
No action for reparation for exactions for railroad freight payments can be maintained in any court, Federal or state, in the absence of an appropriate finding and order of the Interstate Commerce Commission. The rule laid down in *Texas & Pacific Railway Co.* v. *Abilene Oil Co.*, 204 U. S. 426, as to suits for recovery of unreasonable rates, applies also to suits for recovery of rates as discriminatory. *Ib.*

14. *Rates; action for discriminatory exaction; when maintainable.*
In this case *held* that an action could not be maintained for discriminatory exaction on coal rates of fifty cents a ton when loaded

from wagons and not from tipples, as the complaint had not shown that the schedule had been the subject of complaint to the Interstate Commerce Commission and held by it to be discriminatory. *Ib.*

15. *Sales by agent in State other than that of manufacture not interstate commerce transactions.*

Where the relation of principal and agent exists between one selling goods in one State which are manufactured in another State and the manufacturer, sales made by the former within his own State are not interstate commerce transactions but are subject to the taxing power of the State. *Banker Brothers Co.* v. *Pennsylvania*, 210.

16. *Same; effect of payment by purchaser of freight from place of manufacture.*

Where the transaction of sale of an article manufactured in another State is wholly intrastate, as between vendor and vendee, it does not become interstate and immune from state taxation because the purchaser pays freight from the place of manufacture or because the purchaser obtains a warranty direct from the manufacturer. *Ib.*

17. *State interference; when goods at rest and subject to state laws.*

In this case *held*, that goods manufactured in another State and delivered only, in pursuance of contract, after payment of draft attached to bill of lading, are at rest and subject to the laws of the State while in the hands of the consignee before delivery by him to a purchaser from him, notwithstanding the consignee only ordered them after a contract with the purchaser had been made. *Ib.*

18. *State interference; when state statute superseded by Federal legislation.*

Southern Railway Co. v. *Reid*, *ante*, p. 424, followed to effect that legislation of Congress in regard to matters of interstate commerce need not be inhibitive, but only to occupy the field, in order to supersede state statutes on the same subject. (*Northern Pacific Ry. Co.* v. *Washington*, *ante*, p. 370.) *Southern Ry. Co.* v. *Reid & Beam*, 444.

19. *State interference; effect of act of Congress to supersede state legislation; validity of North Carolina law relative to carriers.*

By the specific provisions of the act to regulate commerce, as amended, Congress has taken control of rate making and charging for in-

terstate shipments, and in that respect such provisions supersede state statutes on the same subject; and so *held* that a statute of North Carolina requiring common carriers to transport freight as soon as received to interstate points under penalties for failure, conflicts with the requirement of § 2 of the Hepburn Act of July 29, 1906, c. 3591, 34 Stat. 584, forbidding transportation until rates had been fixed and published, and is therefore unenforceable. *Southern Ry. Co.* v. *Reid*, 424.

10. *State interference; when middle ground of state authority passed.*
Any middle ground on which state authority might still be preserved after Congress has spoken in regard to interstate commerce is passed when the state regulation burdens such commerce, and the imposition of penalties for failure to receive and transport freight does impose a burden. *Ib.*

See CATTLE QUARANTINE ACT; CONSTITUTIONAL LAW, 1, 2, 3; JUDICIAL NOTICE; SAFETY APPLIANCE ACTS; STATES, 2, 3, 16, 17.

INTERSTATE COMMERCE COMMISSION.

1. *Findings; conclusiveness of.*
The Act to Regulate Commerce makes the findings of the Interstate Commerce Commission as to reasonableness of a rate *prima facie* correct. (*Cincinnati &c. Ry.* v. *Interstate Commerce Commission*, 206 U. S. 154.) *Interstate Com. Comm.* v. *Union Pacific Ry. Co.*, 541.

2. *Findings; conclusiveness of.*
Where, as in this case, there is testimony as to value of the roads, amounts expended, dividends, ratio of earnings and expenses, and other matters, there is evidence to support the conclusions and the findings of the Commission on such facts are conclusive. *Ib.*

3. *Orders; finality of.*
Orders of the Interstate Commerce Commission are final unless beyond the power that the Commission can constitutionally exercise; beyond its statutory power, or based upon a mistake of law. *Ib.*

4. *Orders may be set aside, when.*
An order of the Commission, regular on its face, may be set aside if it appears that the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property

without due process of law; or if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence or without evidence to support its conclusions; or if the authority was exercised in an absolutely unreasonable manner. *Ib.*

5. *Orders; validity of; power in fixing rates.*
An order of the Interstate Commerce Commission is not to be considered by itself alone, but must be considered in the light of all the testimony, and when carriers themselves maintain a ratio of difference, a rate fixed by the Commission maintaining the same ratio of difference cannot be said to be beyond its power. *Ib.*

6. *Orders fixing rates; considerations in determining validity.*
An order of the Interstate Commerce Commission within its power cannot be held invalid because it appears that possibly the Commission considered other subjects than the reasonableness of the rate; and in this case, *held* that an order fixing a rate on lumber was not invalid because the Commission examined into the effect of the rate on the lumber business and on the industries of the various points affected. *Ib.*

See APPEAL AND ERROR, 4;
INTERSTATE COMMERCE, 3, 6, 12, 13, 14;
PRACTICE AND PROCEDURE, 18.

JUDGMENTS AND DECREES.

1. *Attacking decisions of Board of Land Commissioners of Hawaii; mode of.*
This court sustains the rule laid down by the Supreme Court of Hawaii that decisions of the Board of Land Commissioners of 1845 could not be attacked except by direct appeal to the Supreme Court of Hawaii as provided by law: *Lewers & Cooke* v. *Atcherly*, 285.

2. *Reëxamination of decree sought to be executed.*
Where one asks the aid of a court of chancery in executing a former decree, he takes the risk of opening such decree for reëxamination. (*Lawrence Manufacturing Co.* v. *Janesville Cotton Mills*, 138 U. S. 532.) *Ib.*

3. *Scope of decree establishing will.*
A decree establishing a will may determine who is entitled to testator's property without determining that a particular property belonged to the inheritance. *Ib.*

4. *Stay order for rehearing and one for purposes of certiorari differentiated.*
There is a difference between a stay order for purposes of rehearing,

which prevents a judgment from becoming final, and one granted to enable an application to be made for certiorari which does not prevent the judgment from becoming final. *Title Guaranty Co.* v. *General Electric Co.*, 401.

See APPEAL AND ERRORS, 4; BANKRUPTCY, 14; INTERSTATE COMMERCE COMMISSION, 3–6; JURISDICTION, A 1, 13, 22, 23; PRACTICE AND PROCEDURE, 8, 11, 18; RAILROADS, 4.

JUDICIAL NOTICE.

Of importations and sales of commodity.

This court cannot take judicial knowledge of details of importations and sales of a commodity even if it can take such knowledge of the fact that such commodity is an article of interstate commerce. *Williams* v. *Walsh*, 415.

See INTERSTATE COMMERCE, 3; PRACTICE AND PROCEDURE, 17; PUBLIC WORKS, 4.

JURISDICTION.

A. OF THIS COURT.

1. *Judgments and decrees reviewable under Judiciary Act of 1891.*

The Judiciary Act of 1891 affords by one method or the other an opportunity for review by this court of every judgment or decree of a lower court which the Judiciary Act contemplated should be reviewed by this court. *Brown* v. *Alton Water Co.*, 325.

2. *Of direct appeal from Circuit Court of judgment on mandate from Circuit Court of Appeals.*

This court may not by indirection do that which it cannot do directly; and cannot, therefore, review on direct appeal a judgment of the Circuit Court on the question of jurisdiction based on a decision of the Circuit Court of Appeals which it was the imperative duty of the Circuit Court to follow, and which is not, and cannot be, before this court for review by appeal. *Ib.*

3. *Same.*

Where the Circuit Court dismisses for want of jurisdiction, and the Circuit Court of Appeals does not deem the question of jurisdiction should be certified to this court but reverses and remands with directions to take jurisdiction, and this court refuses certiorari, a direct appeal will not lie to this court from the judgment of the Circuit Court based on the decision of the Circuit

Court of Appeals which it was the imperative duty of the Circuit Court to follow. *Ib.*

4. *Under § 5 of Judiciary Act of 1891; when jurisdiction of Circuit Court in issue.*

Jurisdiction of the Circuit Court is in issue under § 5 of the Judiciary Act of March 3, 1891, c. 517, 26 Stat. 826, whenever the power of the court to hear and determine the cause as defined or limited by the Constitution or statutes of the United States is in controversy; and that covers a case where the jurisdiction of the particular Circuit Court is questioned under the statute prescribing the form and place of the action. *United States* v. *Congress Construction Co.*, 199.

5. *Jurisdictional amount; amount in controversy where impairment of contract of exemption from taxation in issue.*

The amount in controversy where the question is whether a contract of exemption from taxation has been impaired by subsequent legislation is measured by the value of the right to be protected and not by a mere isolated element, such as the tax for a single year. *Berryman* v. *Whitman College*, 334.

6. *Same.*

In this case the jurisdictional value of amount in controversy *held* to exceed $2,000, although the actual tax, the collection whereof was sought to be enjoined on the ground that its imposition impaired the obligation of a legislative contract, was less than $2,000. *Ib.*

7. *Same.*

Cases, in which the jurisdictional value of amount in controversy is limited to the single tax involved, reviewed and distinguished. *Ib.*

8. *Same; evidence to establish requisite amount.*

Where the record shows that the jurisdictional value is not made out by a preponderance of evidence, the appeal will be dismissed. (*Red River Cattle Co.* v. *Needham*, 137 U. S. 632.) *Enriquez* v. *Enriquez* (*No. 2*), 127.

9. *Same; sufficiency of amount in controversy.*

Under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 695, this court can only review judgments of the Supreme Court of the Philippine Islands where the value in controversy exceeds $25,000; and in this case it does not appear that the value of real property affected equals that amount. *Ib.*

10. *Of appeal from Circuit Court of Appeals on ground of constitutional question involved.*

Where the constitutional question is not advanced by the defendant until the trial it does not give jurisdiction of an appeal to this court from the Circuit Court of Appeals. (*Macfadden* v. *United States*, 213 U. S. 288.) *Chicago Junction Ry. Co.* v. *King*, 222.

11. *Of appeal from Circuit Court of Appeals when action based on Federal statute.*

Where the cause of action is based on a statute of the United States there is an appeal to this court from the judgment of the Circuit Court of Appeals. *Ib.*

12. *Of appeal from Circuit Court of Appeals; practice when case rests on Federal statute but does not involve its interpretation.*

Although there may be jurisdiction because the cause of action rests on a statute of the United States, where none of the contentions directly invoke the interpretation of the statute, but merely the question whether, on the evidence, there was a right of recovery, the case is of the character of cases in which it was the purpose of the Judiciary Act of 1891 to make the judgment of the Circuit Court of Appeals final, and this court will only examine the record to see if plain error has been committed; and if that is not apparent, it will, as in this case, affirm the judgment. *Ib.*

13. *When right claimed under judgment of Federal court denied.*

The denial of a right claimed under the judgment of a Federal court lays the foundation for a review in this court, and where the state court proceeds to judgment on the ground that bankruptcy proceedings against the defendant had been concluded by denial of adjudication and the injunction against suits in the state court thereby dissolved this court has jurisdiction. *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.

14. *Federal question wanting where state court gives no effect to a subsequent law claimed to impair prior contract.*

When the state court gives no effect to the subsequent law, but decides, on grounds independent of that law, that the right claimed was not conferred by the contract claimed to have been impaired, the case stands as though the subsequent law had not been passed and this court has no jurisdiction. (*New Orleans Water Works* v. *Louisiana Sugar Refining Co.*, 125 U. S. 38.) *Missouri & Kansas I. Ry. Co.* v. *Olathe*, 187, 191.

15. *Same.*

Where a franchisee refuses to pay the agreed compensation on the ground that a subsequent ordinance deprived it of a part of the franchise granted, but the state court decides that it has had substantially everything and that compensation is due without regard to the part affected, no effect is given to the subsequent ordinance, no question of impairing the obligation of the contract is involved, and there being no Federal question this court has no jurisdiction under §§ 709, Rev. Stat. *Ib.*

16. *Where state court bases jurisdiction on its own construction of Federal statute.*

Where the state court bases its jurisdiction entirely on the construction given a Federal statute by it adversely to contention of plaintiff in error, this court has jurisdiction to review the judgment. (*Rector* v. *Bank*, 200 U. S. 405.) *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.

17. *To review judgment of District Court for Porto Rico when jurisdictional amount not involved.*

Under the act of April 12, 1900, c. 191, 31 Stat. 85, this court cannot review a judgment of the District Court of the United States for Porto Rico where the amount in controversy is less than five thousand dollars, unless the validity or interpretation of an act of Congress is brought in question, or a right claimed thereunder is denied. *Aran* v. *Zurrinach*, 395.

18. *Same; when Federal question raised too frivolous.*

Not every mere question of irregularity in applying the law of the United States arising in the court below confers a right of review on this court which otherwise would not exist; and where, as in this case, there is generality of statement and absence of specification to sustain the objections raised, in regard to qualifications and drawing of jurors in Porto Rico and the application of the Federal statutes thereto, the questions raised will be regarded as too frivolous to sustain jurisdiction, and the writ of error will be dismissed. *Ib.*

19. *To review judgments of Supreme Court of Philippine Islands; jurisdictional amount.*

Under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 695, this court can only review judgments of the Supreme Court of the Philippine Islands where the value in controversy exceeds $25,000; and where only a half interest of property is affected, jurisdic-

tion does not exist unless the value of such half interest exceeds that amount. *Enriquez* v. *Enriquez*, 123.

20. *Same; sufficiency of affidavit to show jurisdictional amount.*
An affidavit that the value of the real property involved in the action exceeds $25,000 is not sufficient to confer jurisdiction where only a one-half interest is affected and the context of the affidavit gives rise to the inference that the statements as to value relate to the entire property and not to a half interest therein. *Ib.*

21. *Same; insufficient amount shown by record.*
In this case resort to the record shows that the value of the interest in the property affected is less than the jurisdictional amount. *Ib.*

22. *Finality of judgment sought to be reviewed.*
Unless it appears from the record that the judgment sought to be reviewed finally determines the cause this court is without jurisdiction. *Missouri & Kansas I. Ry. Co.* v. *Olathe*, 185.

23. *Finality of judgment; judgment sustaining demurrer without dismissal of suit, not final.*
Where the judgment sought to be reviewed affirms the judgment below but merely sustains the demurrer without dismissing the suit, so that the cause is left standing in the lower court for further proceedings, it is not a final judgment reviewable by this court. *Ib.*

See BANKRUPTCY, 5, 7, 8;
FEDERAL QUESTION;
STARE DECISIS, 2.

B. OF CIRCUIT COURTS OF APPEALS.

See Supra, A 12.

C. OF CIRCUIT COURTS.

1. *Amount in controversy for purposes of; when aggregate of several demands the test.*
When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount. *Troy Bank* v. *G. A. Whitehead Co.*, 39.

2. *Amount in controversy; when aggregate of several demands sufficient.*
The Circuit Court has jurisdiction of a suit brought by several plaintiffs to enforce a vendor's lien equally securing notes aggregating more than $2,000 held by them and which neither can enforce in the absence of the other, even though the claim of each plaintiff is less than $2,000. *Ib.*

3. *Diversity of citizenship; arrangement of parties by court.*
In determining whether diversity of citizenship exists to give jurisdiction it is the duty of the Circuit Court to arrange the parties with respect to the actual controversy looking beyond the formal arrangement made by the bill. *Helm* v. *Zarecor*, 32.

4. *Diversity of citizenship; arrangement of parties in controversy over control of corporation.*
Where, as in this case, the controversy over the control of a corporation transcends the rivalry of those claiming to be members of its board of control and the corporation itself is a mere instrumentality or title holder, it is properly made a party defendant and should not be aligned as a party plaintiff merely because the plaintiffs belong to the same faction that claims the power to appoint the members of the board of control. *Ib.*

See Supra, A 4.

D. Of District Court.

To issue ex parte injunction to restrain proceeding in state court.
There is no power in the District Court to issue an *ex parte* injunction, without notice or service of process, attempting to restrain a creditor suing in a State outside the jurisdiction of the District Court. Ancillary jurisdiction in aid of the jurisdiction of the District Court exists under the act of June 25, 1910, c. 412, 36 Stat. 838. *Re Wood & Henderson*, 210 U. S. 246, distinguished. *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.

See Supra, A 17, 18;
Maritime Law, 3.

E. Of Court of Claims.

Of claims for seizures during Spanish-American war.
Under the prohibitions of the Tucker Act, the Court of Claims has no jurisdiction of claims for seizures made in Santiago after its capitulation in violation of the President's proclamation of July 13, 1898, or of the laws of war. *Herrera* v. *United States*, 558.

F. Of Bankruptcy Courts.
See Bankruptcy, 2, 3, 4.

G. Of State Courts.
See Removal of Causes, 1, 4.

H. Generally.
See Actions, 1, 2;
Criminal Law, 1.

LABOR.
See Public Works, 2, 3.

LACHES.
Imputation to grantee of laches of grantor in respect of claim to property purchased by United States.
Where the reference to the Court of Claims, as in this case, is not to determine whether the grantor of a claimant of a part interest in real estate purchased by the United States had a valid title at the time the United States took possession, but whether the claimant has acquired a valid title to the property, with provision that the United States may plead any defense, the conduct of claimant's grantor is to be considered; and if such grantor was guilty, as in this case, of gross laches, claimant cannot recover. *Hussey* v. *United States*, 88.
See Partnership, 7;
Sales, 3.

LAND ENTRIES.
See Public Lands, 2–5.

LAWS OF WAR.
See War.

LEGACIES.
See Estates of Decedents;
Taxes and Taxation, 19.

LEGAL INSTRUMENTS.
See States, 8.

LEGISLATION.
Test of validity.
Legislation cannot be judged by theoretical standards but must be

tested by the concrete conditions inducing it. *Mutual Loan Co.* v. *Martell*, 225.

See CONSTITUTIONAL LAW, 9; LOCAL LAW (FLA.); COURTS, 1; PRACTICE AND PROCEDURE, 15; STATES, 1.

LEGISLATIVE POWER.

See CONSTITUTIONAL LAW, 23; GOVERNMENTAL POWERS AND FUNCTIONS, 1-3; STATES, 1.

LEVEES.

See PUBLIC WORKS, 3, 4.

LEX LOCI.

Liability of parties fixed by.

With rare exceptions, the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. *Cuba R. R. Co.* v. *Crosby*, 473.

LIBEL.

1. *Excess without malice; liability for.*

In the absence of express malice or excess, publication of actual facts is not libellous, and in case of mere excess without express malice the only liability is for damages attributable to the excess; and refusal of the trial court to charge to this effect is error. *Gandia* v. *Pettingill*, 452.

2. *What constitutes; quære as to.*

Quære: Whether attributing to a person conduct that is lawful can be libellous. *Ib.*

LIBERTY OF CONTRACT.

See STATES, 5.

LIENS.

See BANKRUPTCY, 14; CONSTITUTIONAL LAW, 3.

LIMITATION OF ACTIONS.

See CONSTITUTIONAL LAW, 4.

LIVE-STOCK.

See CATTLE QUARANTINE ACT.

LOCAL LAW.

Common-law countries; identity of statute law not presumed. While as between two common-law countries the common law may be presumed to be the same in one as in the other, a statute of one would not be presumed to be the statute of the other. *Cuba R. R. Co.* v. *Crosby*, 473.

California. Penal Code, § 246, assaults by convicts (see Constitutional Law, 12). *Finley* v. *California*, 28.

Cuba; analogy to common law not assumed. There is no general presumption that the law of Cuba as inherited from Spain and as since modified is the same as the common law. *Cuba R. R. Co.* v. *Crosby*, 473.

District of Columbia. Statute of Frauds, Code, § 1117 (see Contracts, 10). *Lenman* v. *Jones*, 51. Rule in Shelley's case (see Estates of Decedents). *Vogt* v. *Graff and Vogt*, 404.

Florida. Legislation; effect of variance between bill and act. Under the law of Florida, as declared by its highest court, where there is a variance between the title of a bill as enrolled and promulgated and the title of the act as shown by the journals, the latter will control. *Peters* v. *Broward*, 483.

See COURTS, 1.

Hawaii. Mode of reviewing decisions of Board of Land Commissioners (see Judgments and Decrees, 1). *Lewers & Cooke* v. *Atcherly*, 285.

Illinois. Mob and riot act of 1887 (see Constitutional Law, 6). *City of Chicago* v. *Sturges*, 313. Judgment liens (see Bankruptcy, 14). *Rock Island Plow Co.* v. *Reardon*, 354.

Kansas. Sales of black powder (see Constitutional Law, 18). *Williams* v. *Walsh*, 415.

Massachusetts. Assignments of wages (see Constitutional Law, 8). *Mutual Loan Co.* v. *Martell*, 225. Distribution of estates of absentees (see Constitutional Law, 4). *Blinn* v. *Nelson*, 1.

New York. Transfer tax law of 1896 (see Constitutional Law, 7). *Keeney* v. *New York*, 525.

North Carolina. Oil inspection law of 1909 (see Taxes and Taxation, 3). *Red "C" Oil Co.* v. *North Carolina*, 380. Regulation of transportation of freight by common carriers (see Interstate Commerce, 19). *Southern Ry. Co.* v. *Reid*, 424.

Washington. Liens on vessels for torts committed, Code, §§ 5953, 5954 (see Constitutional Law, 3). *Martin* v. *West*, 191.

LOCAL OFFICERS.

See CONSTITUTIONAL LAW, 26.

LOTTERIES.

See CRIMINAL LAW, 4.

MAIL SERVICE CONTRACTS.

See CONTRACTS, 11, 12, 13.

MALICIOUS PROSECUTION.

Safeguards of Fourth Amendment.

Citizens are furnished the surest safeguards against malicious prosecutions by the Fourth Amendment. *United States* v. *Morgan*, 274.

MANDAMUS.

1. *Nature of writ and who entitled.*

But mandamus is not a writ of right. It issues to remedy a wrong, not to promote one, and will not be granted in aid of those who do not come into court with clean hands. *Turner* v. *Fisher*, 204.

2. *To require Secretary of Interior to restore names to Indian enrollment.*

In the absence of other controlling facts, the Secretary of the Interior could have been required by mandamus to restore the names of those thus arbitrarily stricken off without notice. (*Garfield* v. *Goldsby*, 211 U. S. 249.) *Ib.*

3. *Defense to writ to compel Secretary of Interior to restore names to Indian enrollment.*

Although the petition for the writ alleged that relators were freedmen duly enrolled and denied the truth of the testimony on which their names were stricken off, yet where the answer of the Secretary referred to that testimony and alleged, "on information and belief,

that the relators were not freedmen members or members by blood or marriage of the Creek Nation, and that their enrollment had been procured by fraud," a defense was stated, proof of which would have defeated the right to a restoration of relators' names, even though they had been improperly stricken from the rolls without due process. (*Redfield* v. *Windom*, 137 U. S. 636, 646; *In re Sanford Co.*, 160 U. S. 257.) *Ib.*

4. *Defense; pleading and practice; effect of election to stand on general demurrer to answer which is overruled.*

Where a general demurrer to an answer containing such defense was overruled, and the relators, instead of replying, elected to stand on their demurrer, the writ of mandamus was properly refused. (*In re Sanford Co.*, 160 U. S. 257.) *Ib.*

5. *Futility of issuance of writ.*

To have issued the writ would have involved the useless thing of requiring relators' names to be reëntered, and in other proceedings having their names stricken because the original enrollment had been procured by fraud, thus admitted by the demurrer. *Ib.*

See APPEAL AND ERROR, 3.

MARITIME LAW.

1. *Limitation of liability by vessel owners; policy of Congress as to.*

The policy of Congress in enacting statutes in regard to the liability of vessel owners has been to encourage investment in ships and to that end to relieve the owners from liabilities that are not the result of their own fault, negligence or privity. *Richardson* v. *Harmon*, 96.

2. *Same. Effect of § 18 of act of June 26, 1884.*

Section 18 of the act of June 26, 1884, 23 Stat. 57, c. 121, adds to the claims against which vessel owners can limit their liability and includes those arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, but leaves them liable for their own faults, neglect and contracts. *Ib.*

3 *Same; where tort non-maritime.*

The owners of a vessel colliding by its own fault with a structure on land can limit their liability for the damages done to their interest in the vessel although such a collision may not be a maritime tort, and the District Court has jurisdiction to entertain a petition to that effect. *Ib.*

4. *Torts; determination of whether tort maritime or non-maritime.*
Whether a tort be maritime or non-maritime must be determined by the character and locality of the injured thing at the time the tort was committed, and subsequent facts as to location furnish no criterion. (*Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388.) *Martin* v. *West*, 191.

5. *Torts; collision of vessel with bridge non-maritime.*
Where a vessel by its own fault collides with and injures a bridge which is essentially a land structure and which is maintained and used as an aid to commerce on land, the tort is non-maritime. *Ib.*

6. *Torts; availability of remedy provided by state statute.*
The remedy for a non-maritime tort provided by the state statute can be pursued in the state court against the vessel committing it, even though the statute gives a lien on the vessel. *Ib.*

MARSHALS.
See WRIT AND PROCESS.

MASTER AND SERVANT.
See COURTS, 4.

MATERIALMEN.
See ACTIONS, 2.

MAXIMS.
Expressio unius est exclusio alterius.
The maxim *expressio unius est exclusio alterius* is a rule of construction and not of substantive law, and serves only as an aid in discovering legislative intent when not otherwise manifest. *United States* v. *Barnes*, 513.
See EQUITY.

MERGER OF ESTATES.
See ESTATES OF DECEDENTS.

MISTAKE.
See CONTRACTS, 19.

MOBS AND RIOTS.
See CONSTITUTIONAL LAW, 6;
MUNICIPAL CORPORATIONS, 1, 2.

MOVING PICTURES.

See COPYRIGHTS, 1, 2.

MUNICIPAL CORPORATIONS.

1. *Duty of protecting property from mob violence; imposition by State of creation.*

It is a familiar rule of the common law that the State which creates subordinate municipal governments and vests in them police powers essential to preservation of law and order may impose upon them the duty of protecting property from mob violence and hold them liable for loss caused by such violence. *City of Chicago* v. *Sturges*, 313.

2. *Liability for damage by mob violence.*

Liability of the municipality for property destroyed by mob violence rests upon reasonable grounds of public policy and operates to deter the lawless destruction of property. *Ib.*

3. *Counties; liability for mob violence; imposition by State not unreasonable.*

It is not unreasonable for a State to make a county liable for damages sustained by sufferers whose property is not within any incorporated city. *Ib.*

See CONSTITUTIONAL LAW, 6, 21, 28.

NATIONAL PARKS.

See PUBLIC LANDS, 7, 8, 9.

NAVIGABLE WATERS.

State power concerning structures in; effect of act of March 3, 1899, 30 Stat. 112.

The act of March 3, 1899, c. 425, § 10, 30 Stat. 1121, 1151, authorizing establishment of harbor lines was not intended, and did not operate, to paralyze all state power concerning structures of every character in navigable waters within their borders, or to automatically destroy property rights previously acquired under sanction of state authority. (*Cummings* v. *Chicago*, 188 U. S. 410.) *Gring* v. *Ives*, 365.

NEW TRIAL.

See HABEAS CORPUS.

NOTICE.

See BANKRUPTCY, 11; CRIMINAL LAW, 1; INDIANS, 1, 2; JURISDICTION, D:

OBSTRUCTIONS TO NAVIGATION.
See NAVIGABLE WATERS.

OIL INSPECTION LAWS.
See STATES, 19.

OFFENSES.
See CRIMINAL LAW.

OFF-SET.
See CONTRACTS, 13, 14.

OLEOMARGARINE ACT.
Special taxes; § 3177, Rev. Stat., not excluded.
The mention in the Oleomargarine Act of August 2, 1886, c. 840, 24 Stat. 209, § 3, of certain specified sections of the Revised Statutes, which relate to special taxes, as applicable to the special taxes imposed by § 3, may exclude other sections relating to special taxes but does not exclude as inapplicable to the collection of the taxes imposed by, and enforcement of, the Oleomargarine Act, § 3177, Rev. Stat., which is general in its terms, and relates to all articles and objects subject to internal revenue tax. *United States* v. *Barnes*, 513.

ONUS PROBANDI.
See EQUITY.

OPTIONS.
See CONTRACTS, 15, 19;
PRINCIPAL AND AGENT, 3.

ORIGINAL PACKAGE.
See WORDS AND PHRASES.

PARTIES.
See APPEAL AND ERROR, 1; 2, 3;
CONTRACTS, 2, 8, 18;
COURTS, 5;
JURISDICTION, C 3, 4;
PRACTICE AND PROCEDURE, 20, 21, 22;
REMOVAL OF CAUSES, 2, 3;
STATES, 1.

PARTNERSHIP.
Equality of partners; claims for services by surviving partner not favored.
The law implies equality between partners and does not favor claims

of the survivor for services rendered after dissolution of the firm and which lead to efforts to prove disparity. *Consaul* v. *Cumming*, 262.

2. *Duty of partners; right of survivor to additional compensation for completing business of firm.*

Each partner is bound to devote himself to the firm's business and there is no implied obligation on the part of the other partners to pay him more than his proportion for performing his duty; and this rule applies to a surviving partner completing the business of the firm. *Ib.*

3. *Surviving partners not entitled to compensation for winding up affairs of firm.*

While equity at times makes exceptions to the general rule that a surviving partner is not allowed compensation for winding up the affairs of the copartnership, this case does not fall within such exceptions. *Ib.*

4. *Limited; dissolution; effect of lunacy or death of partner; compensation to which survivor entitled.*

A limited partnership formed by two lawyers to prosecute claims against the Government, one of whom had already secured the claims and the other of whom was to attend to the prosecution, *held* not to be one in which either the lunacy or death of the former would amount to a dissolution or entitle the survivor to extra compensation for prosecuting the claims after such events to a successful conclusion, the partnership gains being payable *in solido* and dependent upon success, and the record showing that the deceased partner did not at any time aid materially in the prosecution of the claims and was not expected to. *Ib.*

5. *Accounting by surviving partner of law firm prosecuting claims.*

A surviving partner of a law firm prosecuting claims under powers of attorney from the claimants to the deceased partner cannot retain the business individually and claim that the powers to the deceased partner were revoked by his death; he must account to the representatives of the deceased partner for his share of the fees. *Ib.*

6. *Same; interest chargeable.*

If the defendant should have previously accounted, but wantonly refused or neglected so to do, interest is properly chargeable from the filing of the bill. *Ib.*

7. *Accounting; laches not imputed to administrator of deceased partner who delays demand until realization of assets.*

A curator and administrator of a deceased member of a partnership, who has no power of sale, is not chargeable with laches because he waits until the surviving partner has realized the assets of the copartnership before demanding an account. The interests of his ward and intestate are founded in contract and cannot be destroyed by mere non-action. *Ib.*

See SALES, 3.

PENAL STATUTES.

See STATUTES, A 15, 16.

PENALTIES AND FORFEITURES.

See CONSTITUTIONAL LAW, 11, 12;
PRINCIPAL AND SURETY, 2;
STATES, 11.

PERJURY.

See BANKRUPTCY, 13;
CONSTITUTIONAL LAW, 24, 25;
STATUTES, A 11.

PERSONAL PROPERTY.

See ESTATES OF DECEDENTS, 6;
TAXES AND TAXATION, 15, 16.

PHILIPPINE ISLANDS.

See JURISDICTION, A 9, 19, 20.

PHOTO-PLAYS.

See COPYRIGHTS, 1, 2.

PLEADING.

Ignorance of the law not available as defense where court has pointed way to knowledge.

Where the state courts have held that the journals of the legislature can be examined to determine whether an act has been validly passed, it is the duty of one proposing to rely upon the act to examine the journals, and he cannot plead ignorance of the law as an excuse for not doing so. *Peters* v. *Broward*, 483.

See CONTRACTS, 8, 13, 14;
MANDAMUS, 4.

POLICE POWER.

Test of validity of police regulations.

The validity of police regulations depends upon the circumstances of each case, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose. (*Chicago, Burlington & Quincy Ry. Co.* v. *Drainage Commissioners*, 200 U. S. 591.) *Mutual Loan Co.* v. *Martell*, 225.

See CONSTITUTIONAL LAW, 8;
MUNICIPAL CORPORATIONS, 1;
STATES, 12–20.

PORTO RICO.

See BANKRUPTCY, 4, 5, 6;
CONTRACTS, 1;
JURISDICTION, A 17, 18.

POSTMASTER GENERAL.

See CONTRACTS, 12.

POWDER.

See STATES, 20.

PRACTICE AND PROCEDURE.

1. *Bill of exceptions; effect of absence from record.*

Occurrences at the trial cannot be considered if the record contains no bill of exceptions. *Kinney* v. *United States Fidelity Co.*, 283.

2. *Bill of exceptions; sufficiency of.*

A paper in the record signed by the plaintiff is not a bill of exceptions although styled exceptions to charge of jury and purporting to be initialed by the trial judge. (*Origet* v. *United States*, 125 U. S. 243.) *Ib.*

3. *Exceptions; when to be noted.*

The stricter practice is to note the exceptions before the jury retires; but if all the exceptions are noted in open court after jury returns and no wrong is suffered, an exception will not be sustained on that ground. *Gandia* v. *Pettingill*, 452.

4. *Exception to statement of account not made in lower court not available in this court.*

If a defendant did not except to a ruling fixing a date for calculating interest on an account, and asked to be allowed interest on ad-

vances from the same date, he is deemed to have acquiesced in the ruling, and cannot complain of it in this court. *Consaul* v. *Cummings*, 262.

5. *Findings of fact by Court of Claims; sufficiency; when cause remanded for additional findings.*

Where the right of one claiming under a contract with the United States depends on whether the government inspector acted in good or in bad faith in refusing to allow the work to proceed, the findings of the Court of Claims should be specific in this respect; and if not, the case will be remanded with directions to make specific findings. *Ripley* v. *United States*, 144.

6. *Same.*

Findings, which simply state that the inspector in immediate charge of the work acted with knowledge, other inspectors being also referred to in the findings, and which do not make a direct and unequivocal finding as to the good or bad faith of the inspector in giving the orders, do not conform to the order of this court heretofore made in this case, 220 U. S. 491, and the case is remanded for further compliance therewith. *Ib.*

7. *Finding by state court of termination of bankruptcy proceeding not conclusive on this court.*

A finding by the state court that bankruptcy proceedings had been concluded by denial of adjudication does not conclude this court on writ of error to review the judgment of the state court. *Acme Harvester Co.* v. *Beekman Lumber Co.*, 300.

8. *Following lower court's decision as to conflicting decrees.*

Of two former decrees adjudicating title to real estate, the Supreme Court of Hawaii having found that the earlier was right and bound all interests and that the later was wrong, this court affirms, seeing no reason for not following the local court. *Lewers & Cooke* v. *Atcherly*, 285.

9. *Following state court's construction of state statute.*

Whether a state statute providing remedies for damages to property within the State includes those to specified classes of property is for the state court to determine, and this court accepts the construction so given. (*The Winnebago*, 205 U. S. 354.) *Martin* v. *West*, 191.

10. *Following state court's construction of state statute.*

The question of validity of a state statute under the state constitution

is foreclosed in this court by the decision of the highest court of the State. *City of Chicago* v. *Sturges*, 313.

11. *When state court's adjudication as to validity of state statute followed though not res judicata.*

While the judgment of the highest court of the State in a case may not be *res judicata* of the case at bar, the parties and land affected not being the same, if in deciding it the court announces what the law of the State is and whether a particular statute was or was not validly enacted under the state constitution, this court will follow it as an authoritative announcement of the law of the State. *Peters* v. *Broward*, 483.

12. *Effect of decision by state court that act of State is unconstitutional on right of this court to hold it constitutional.*

This court cannot hold that an act is constitutional under the state law because the defect on which the state court declared it to be unconstitutional occurred through mistake, when the state court has passed on that question and held the act unconstitutional even under such condition. *Ib.*

13. *Following territorial court's construction of local statute.*

Where it is inherently legal and protects private rights, the construction given a local statute by the Supreme Court of a Territory will be followed by this court, unless there is such manifest error as to warrant reversal. *Treat* v. *Grand Canyon Ry. Co.*, 448.

14. *Same.*

In this case this court follows the construction, given to a territorial statute of Arizona by the Supreme Court of that Territory, that an exemption from taxation of certain railroad property went with the land and extended to assigns of the first road. *Ib.*

15. *Deference to tribunals on the spot in respect of necessity for legislation.*

This court recognizes the propriety of deferring to tribunals on the spot and will not oppose its notions of necessity to legislation adopted to accomplish a legitimate public purpose. (*Laurel Hill Cemetery* v. *San Francisco*, 216 U. S. 358.) *Mutual Loan Co.* v. *Martell*, 225.

16. *Weight given to decision of court on the spot.*

Great weight should be attributed to the decision of the court on the spot, especially when ancient law is involved, such as existed in Hawaii before the annexation. *Lewers & Cooke* v. *Atcherly*, 285.

17. *Scope of inquiry as respects operation of statute.*
This court cannot determine what the actual operation of a statute will be after its enactment by going outside the record and taking judicial knowledge of what has happened since the filing of the transcript here. *Red "C" Oil Co.* v. *North Carolina*, 380.

18. *Scope of review in determining validity of orders of Interstate Commerce Commission.*
This court, in determining the validity of an order of the Interstate Commerce Commission, confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider expediency, nor will it consider facts further than to determine whether there was sufficient evidence to support the order. *Interstate Com. Comm.* v. *Union Pacific Ry. Co.*, 541.

19. *Record; bill of exceptions; disposition of case when evidence insufficient to support.*
Even if a part of the record were treated as a bill of exceptions if all matters therein depend for their solution upon examination of evidence not in the record, this court will affirm, not having any means for determining whether reversible error arose from the action of the court. *Kinney* v. *United States Fidelity Co.*, 283.

20. *Who may attack validity of law.*
A law cannot be declared invalid at the instance of one not affected by it. *Williams* v. *Walsh*, 415.

21. *Who may attack constitutionality of statute.*
One assessed at the lowest rate under a graduated tax statute cannot object to the constitutionality because others are taxed at the higher rate. *Keeney* v. *New York*, 525.

22. *Who may not object to constitutionality of classification for regulation.*
One within a distinct class which is properly subject to classification cannot question the constitutionality of the classification on the ground that it is too broad and includes others outside of that class. *Aluminum Co.* v. *Ramsey*, 251.

See CONSTITUTIONAL LAW, 18; ESTATES OF DECEDENTS, 1; CONTRACTS, 13, 14; EVIDENCE; COURTS, 1; FEDERAL QUESTION; JURISDICTION, A 8, 12.

PREFERENCES.

See INTERSTATE COMMERCE, 4, 5, 9.

PRESUMPTIONS.

See CONTRACTS, 3;
COURTS, 3, 4;
INTERSTATE COMMERCE, 11;
LOCAL LAW;
STATUTES, A 8, 9, 17;
TAXES AND TAXATION, 6.

PRINCIPAL AND AGENT.

1. *Agent's liability for secret profits; form of action.*

A principal betrayed by his agent into paying for property an excess over the price for which the agent obtains it may declare in assumpsit without relying upon fraud and deceit in an action for damages. *Sandoval* v. *Randolph*, 161.

2. *Same.*

An agent who makes a secret profit in the execution of his agency may be compelled to disgorge in an action upon implied promise. *Ib.*

3. *Agent's right to avail of option antedating employment and make profit on purchase.*

Where one agrees to act as agent to purchase property at not exceeding a specified price, he cannot avail of an unexpired option antedating the employment to purchase the property at a less price himself and make the difference. *Ib.*

See INTERSTATE COMMERCE, 15;
SALES, 1.

PRINCIPAL AND SURETY.

1. *Discharge of surety by extension of time.*

Under the provisions of the contract in this case for possible extensions of time, the sureties on the bond which was part of the contract were not discharged by reason of the extensions which were granted pursuant to the contract. *United States* v. *McMullen*, 460.

2. *Discharge of surety; effect of failure to enforce penalties for delay.*

Where there is a penalty for avoidable delay in performance of a government contract, sureties are not discharged because the Government does not take steps against the contract to collect the penalties. *Ib.*

PROCESS.

See WRIT AND PROCESS.

PROPERTY RIGHTS.

See BANKRUPTCY, 9;
CONSTITUTIONAL LAW, 4;
PUBLIC LANDS, 1, 7, 8.

PUBLICATIONS.

See LIBEL.

PUBLIC HEALTH.

See STATUTES, A 17.

PUBLIC LANDS.

1. *Powers of United States over; limitation of.*

Even if the United States can exercise over public lands the powers of a sovereign as well the rights of a proprietor, there are limitations; neither can be exercised to destroy essential uses of private property. *Curtin* v. *Benson*, 78.

2. *Coal land entries; application to Alaska of § 2350, Rev. Stat.*

Section 2350, Rev. Stat., is, by §§ 1 and 4 of the act of April 28, 1904, 33 Stat. 552, c. 1772, continued in force in the District of Alaska, and prohibits more than one entry of coal land by or for the same person or association of persons. *United States* v. *Munday*, 175.

3. *Coal land entries; policy of Congress in restricting.*

The policy adopted by Congress of restricting one coal land entry to each qualified entryman was to prevent monopolization of coal lands by securing to every citizen the right to obtain for himself one tract of not exceeding one hundred and sixty acres. *Ib.*

4. *Coal land entries; restriction to one not affected by entryman's right to assign.*

A policy to confine the entryman to one entry is not affected by the fact that Congress leaves him free to assign a location made in good faith. (*United States* v. *Keitel*, 211 U. S. 370.) *Ib.*

5. *Coal land entries; construction of statutes relative to.*

All the statutes affecting coal land entries—act of March 3, 1873, 17 Stat. 607, c. 279, now §§ 2347–2349, Rev. Stat.; act of June 6, 1900, 31 Stat. 658, c. 996, and act of April 28, 1904, 33 Stat. 525, c. 1772—are in *pari materia* and must be read together, and no part of the earlier acts is to be regarded as inoperative unless no other construction of the later legislation is reasonable. *Ib.*

6. *Coal lands in Alaska; object of act of 1904.*
The single object of the act of 1904 in regard to coal lands in Alaska was to provide for the sale of unsurveyed coal lands, and it becomes inoperative as soon as the lands are surveyed. *Ib.*

7. *National Parks; limitation of Federal control over lands within.*
It is beyond the power of the Secretary of the Interior or the superintendents of national parks under his control to limit the uses to which lands within the parks held in private ownership may be put; and so held as to regulations prohibiting grazing cattle on private lands within the Yosemite Park until such lands have been defined and marked by an agreed understanding. *Curtin* v. *Benson*, 78.

8. *National parks; duty and liability of owners of land within; quære.*
Quære: Whether owners of lands within National Park limits can be required to fence their lands, or whether the trespassing of their cattle on other lands can be made a criminal offense. *Ib.*

9. *National parks; application of orders of Secretary of Interior; quære.*
Quære: Whether an order of the Secretary of the Interior in regard to park lands can be construed as extending to toll roads constructed under authority of the State. *Ib.*

PUBLIC OFFICERS.
See TORTS.

PUBLIC POLICY.
See INSURANCE, 2;
MUNICIPAL CORPORATIONS, 2.

PUBLIC WORKS.
1. *Contractor bound by terms of statute.*
A contractor for public works has the statute before him and can govern himself accordingly. There is no hardship in holding him to its terms. *United States* v. *Garbish*, 257.

2. *Hours of service on; emergencies contemplated by act of August 1, 1892.*
Under the act of August 1, 1892, 27 Stat. 340, c. 352, restricting service of laborers employed on public works of the United States to eight hours a day except in cases of extraordinary emergency, the exception does not relate to contemplated emergencies necessarily inhering in the work, or to mere requirements of business con-

venience or pecuniary advantage, but only those exceeding the common degree. *Ib.*

3. *Hours of service on; emergencies contemplated by act of 1892; levee work.*

An intention of Congress to exempt from provisions of a general statute declaring a public policy a conspicuous public work, such as repairing levees of the Mississippi river, would undoubtedly have been expressed; and *held*, that the continuing necessity of prompt completion of the work on such levees cannot be classed as an extraordinary emergency within the meaning of the Eight Hour Law of 1892. *Ib.*

4. *Levee work; quære as to judicial notice of necessity for.*

Quære, to what extent the court can take judicial knowledge of necessity for and conditions of a public improvement such as Mississippi river levees. *Ib.*

See ACTIONS, 2.

PURE FOOD AND DRUG ACT.

1. *Hearing in Department of Agriculture not prerequisite to prosecution under.*

It is not a condition precedent to prosecutions for violation of the Pure Food and Drug Act that an investigation or hearing be had in the Department of Agriculture. *United States* v. *Morgan*, 274.

2. *Prosecutions under; who subject to. Sections 771, 1022, Rev. Stat., not repealed by.*

Section 4 of the Pure Food and Drug Act of June 30, 1906, c. 3915, 34 Stat. 678, does not repeal Rev. Stat., §§ 771 or 1022, making it the duty of the district attorney to prosecute all delinquents for crimes and offenses cognizable under the authority of the United States, nor does it limit him to prosecute only those offenders who have had a hearing before the Department of Agriculture. *Ib.*

QUARANTINE.

See CATTLE QUARANTINE ACT.

RAILROADS.

1. *Bridges over Mississippi and Missouri rivers; use of; approaches as parts of structures.*

The object of the provisions in acts of July 25, 1866, 14 Stat. 244, c. 246, and of February 24, 1871, 16 Stat. 430, c. 67, for the con-

struction of railway bridges across the Mississippi and Missouri rivers was that the trains of all railroads terminating at the rivers should be allowed to cross on reasonable terms, and for the more perfect connection of railroads running to the bridges on either side of the river; and, the statutes being construed in that light, the approaches on both sides of the river must be regarded as parts of the structures. *Union Pacific R. R.* v. *Mason City &c. R. R.*, 237.

2. *Bridges; approaches as parts of.*
A railroad bridge can be of no use to the public unless united with the necessary appurtenances for public accommodation. *Ib.*

3. *Bridges; distance within expression "at or near."*
A distance of four miles in the scheme of the Union Pacific Railroad may be reasonably within the expression "at or near." *Ib.*

4. *Bridges; right of use; scope of decree in 199 U. S. 160.*
The decree of the Circuit Court affirmed by this court in 199 U. S. 160, gave to the Mason City and Fort Dodge R. R. Company the right to cross the Union Pacific bridge over the Missouri river and this included the use of main and passing tracks over and approaching the bridge to the extent necessary to constitute a continuous line from the terminus at Council Bluffs to the point at Omaha mentioned therein, but the decree did not give the Mason City Road any rights to use other tracks and terminal facilities of the Union Pacific Railroad. *Ib.*

See CATTLE QUARANTINE ACT;
CONSTITUTIONAL LAW, 1, 2, 3, 13;
SAFETY APPLIANCE ACTS.

RATES.

See INTERSTATE COMMERCE, 6–14, 19;
INTERSTATE COMMERCE COMMISSION, 1, 4, 5, 6.

REAL PROPERTY.

See CONTRACTS, 10.

REBATES.

See INTERSTATE COMMERCE, 2, 5.

RECORD ON APPEAL.

See JURISDICTION, A 21, 22;
PRACTICE AND PROCEDURE, 1, 2, 19.

REMEDIES.

1. *Determination of character, when.*

What relief shall be accorded to one who may sustain injury by the failure of a State to protect his rights under the Constitution, cannot be determined before there has been such failure. *Red "C" Oil Co.* v. *North Carolina*, 380.

2. *Source of relief open to one complaining of regulations promulgated by state board.*

Where one complains that regulations promulgated under legislative authority by a state board are unreasonable and oppressive, he should seek relief by applying to that board to modify them. *Ib.*

3. *Redress against enforcement of state police statute.*

A state police statute cannot be declared invalid because in the opinion of this court it does not accord with sound policy. The appeal for redress must be to the law-making power. *Ib.*

4. *When legislature and not courts to be looked to.*

Although the case may be a hard one, those who expend money on the faith of an invalid act cannot obtain redress from the courts but must apply to the legislature. *Peters* v. *Broward*, 483.

See MARITIME LAW, 6.

REMOVAL OF CAUSES.

1. *Duty of state court when cause removable.*

Where there is a separable controversy and requisite diversity of citizenship it is the duty of the state court to accept the petition and bond and proceed no further in the case; trial and judgment thereafter by the state court would be *coram non judice* unless its jurisdiction over the cause be restored. *Anderson* v. *United Realty Co.*, 164.

2. *Realignment of parties for purpose of.*

Where the record plainly shows that to convert a party defendant into a party plaintiff would be wholly inconsistent with the relief which it is the object of the suit to obtain, the court will not realign such defendant as a plaintiff so as to enable another defendant to remove the case to the Federal court. *FitzGerald* v. *Thomson*, 555.

3. *Same.*

Where, as in this case, the plaintiffs charge one of the defendants with repudiation of obligations and ask his removal as trustee, the claim made at the instance of a co-defendant seeking to remove

the case, that he should be realigned as a party plaintiff, is manifestly frivolous. *Ib.*

4. *Recovery by state court of jurisdiction over cause as to defendants not entitled to remove.*

The state court may recover jurisdiction over a cause which has been removed by defendants having separable controversy, and where plaintiff has an order entered dismissing it against the removing defendants and other defendants having like ground of removal reciting that in consideration of such dismissal the petition for removal is withdrawn, the state court has jurisdiction to proceed against the remaining defendants. *National Steamship Co.* v. *Tugman*, 106 U. S. 118, distinguished. *Anderson* v. *United Realty Co.*, 164.

REPEALS.

See ACTIONS, 1;
STATUTES, A 17.

REPORTS OF DECISIONS.

See INTERSTATE COMMERCE, 3.

RES JUDICATA.

See PRACTICE AND PROCEDURE, 9–12.

RIVERS.

See NAVIGABLE WATERS;
PUBLIC WORKS, 3, 4.

RULE IN SHELLEY'S CASE.

See ESTATES OF DECEDENTS, 1–6.

RULES OF COURT.

See APPENDIX AND SPECIAL INDEX, *post.*

SAFETY APPLIANCE ACTS.

1. *Constitutionality not open to question.*

The repugnancy of the Safety Appliance Law to the Constitution is not now open to controversy; it has been held constitutional. (*Southern Railway Co.* v. *United States*, *ante*, p. 20.) *Chicago Junction Ry. Co.* v. *King*, 222.

2. *Instrumentalities of commerce embraced within.*

The Safety Appliance Act of March 2, 1893, 27 Stat. 531, c. 196, as amended March 2, 1903, 32 Stat. 943, c. 976, embraces all locomotives, cars and similar vehicles used on any railway that is a

highway of interstate commerce, and is not confined exclusively to vehicles engaged in such commerce. *Southern Ry. Co.* v. *United States*, 20.

3. *Instrumentalities of commerce embraced within.*

It is of common knowledge that interstate and intrastate commerce are commingled in transportation over highways of interstate commerce, that trains and cars on the same railroad, whether engaged in one form of traffic or the other, are interdependent and that absence of safety appliance from any part of a train is a menace not only to that train but to others. *Ib.*

SAFETY APPLIANCES.

See CONSTITUTIONAL LAW, 1.

SALES.

1. *Relation of parties to.*

The relation of vendor and vendee, and not that of principal and agent, exists where the manufacturer sells goods to another under exclusive contract and delivers goods only on payment of draft attached to bill of lading. *Banker Brothers Co.* v. *Pennsylvania*, 210.

2. *Duty of one claiming interest in property sold; acts constituting ratification.*

One claiming an interest in property and having knowledge of such claim is charged to consider at the time it is sold by trustees whether he will assert his title or retain a share of the proceeds; both vendor and vendee are entitled to timely disavowal in order to protect and indemnify themselves; acceptance of proceeds and failure to disavow may, as held in this case, amount to ratification. *Hussey* v. *United States*, 88.

3. *Same. Laches barring recovery.*

Even if the state court has decided that the widow of a deceased partner had a community interest in his share of real estate belonging to the partnership, if she does not promptly disavow a sale of the entire property made by surviving partners but accepts part of the proceeds, and makes no attempt for many years to assert title, she is guilty of laches and neither she nor her grantees can recover. *Ib.*

4. *Pendente lite; rights of vendee.*

Where a case has not passed to a final decree one buying *pendente lite*

from a party thereto stands no better than the vendor. (*Mellen* v. *Moline Iron Works*, 131 U. S. 352.) · *Lewers & Cooke* v. *Atcherly*, 285.

See CONSTITUTIONAL LAW, 18, 20; INTERSTATE COMMERCE, 15, 16; CONTRACTS, 10, 15, 17–20; JUDICIAL NOTICE; PRINCIPAL AND AGENT.

SECRETARY OF THE INTERIOR.

See INDIANS, 1; MANDAMUS, 2, 3; PUBLIC LANDS, 7, 9.

SECRETARY OF THE NAVY.

See CONTRACTS, 2.

SELF-INCRIMINATION.

See BANKRUPTCY, 12, 13; CONSTITUTIONAL LAW, 23, 24, 25.

SHELLEY'S CASE.

See ESTATES OF DECEDENTS, 1–6.

SIMILITUDE CLAUSE IN TARIFF ACT.

See CUSTOMS LAW.

SITUS FOR TAXATION.

See TAXES AND TAXATION, 9–16.

SLANDER AND LIBEL.

See LIBEL.

SPECIAL ASSESSMENTS.

See CONSTITUTIONAL LAW, 27.

SPECIAL PRIVILEGES.

See TERRITORIES, 1, 2.

SPECIFIC PERFORMANCE.

See CONTRACTS, 17–20.

STARE DECISIS.

1. *Reference to point, without direct decision, not controlling.*
Even though a court below might hesitate to decide against language

of this court referring to a debated point, if there has been no direct decision, this court is not precluded by such references when the point is actually before it. *Grigsby* v. *Russell*, 149.

2. *Effect of assumption of jurisdiction, unchallenged, on subsequent case in which challenged.*

That this court has assumed jurisdiction in a case in which its jurisdiction passed unchallenged is not controlling in a subsequent case when the jurisdiction is challenged. *Armstrong* v. *Fernandez*, 208 U. S. 324, qualified and limited. *Tefft, Weller & Co.* v. *Munsuri*, 114.

STATES.

1. *Classification of objects for legislation; powers as to.*

The legislature of a State has a wide range of discretion in classifying objects of legislation; and even if the classification be not scientifically nor logically appropriate, if it is not palpably arbitrary and is uniform within the class, it does not deny equal protection. *Mutual Loan Co.* v. *Martell*, 225.

2. *Commerce; power over.*

There are three degrees to which the State exercises power over commerce. First exclusively; second, in the absence of legislation by Congress, until Congress does act; third, where Congress having legislated, the power of the State cannot operate at all. *Southern Ry. Co.* v. *Reid*, 424.

3. *Commerce; power over; cessation of.*

Although when Congress is silent, the State may legislate in aid of, or without burdening, interstate commerce, there may at any time be Federal exertion of authority which takes that power from the State. *Ib.*

4. *Concurrent power of Congress; when paramount.*

Although where Congress and the State have concurrent power, that of the State is superseded when the power of Congress is exercised, the action of Congress must be specific in order to be paramount. (*Missouri Pacific Ry. Co.* v. *Larabee Mills*, 211 U. S. 612.) *Ib.*

5. *Contract; power to restrict liberty of.*

There are many legal restrictions that may be placed by a State on the liberty of contract, and this court will not interfere except in a clear case of abuse of power. (*Chicago, Burlington & Quincy R. R.* v. *McGuire*, 219 U. S. 549.) *Mutual Loan Co.* v. *Martell*, 225.

6. *Controversies between; celerity required of parties.*
Even if the question in litigation is important and should be disposed of without undue delay, a State cannot be expected to move with the celerity of an individual; a motion made in this case by complainant that the court proceed to determine all questions left open by the decision in 220 U. S. 1, denied without prejudice. *Virginia* v. *West Virginia*, 17.

7. *Controversies between; scope of conference suggested in 220 U. S. 1, 36.*
The conference suggested by this court, 220 U. S. 36, is one in the cause to settle the decree and not to effect an independent compromise out of court. *Ib.*

8. *Execution and authentication of legal instruments; regulation by.*
A State has power to prescribe the form and manner of execution and authentication of legal instruments in regard to property, its devolution and transfer. (*Arnett* v. *Reade*, 220 U. S. 311.) *Mutual Loan Co.* v. *Martell*, 225.

9. *Federal authority paramount.*
As between the Federal Government and the States one authority must be paramount and when it speaks the other must be silent. *Southern Ry. Co.* v. *Reid*, 424.

10. *Federal power; effect of exercise on essential power of States.*
No essential power is taken from the States in preserving the balances of the Constitution and giving to Congress the power which belongs to it. *Ib.*

11. *Penalties imposed by; determination of amount; quære as to.*
Quære: Whether conceding that a State may impose a penalty does not concede the State to be competent to determine the amount. *Ib.*

12. *Police power; extent of.*
The power of the State extends to so dealing with conditions existing in the State as to bring out of them the greatest welfare of its people. (*Bacon* v. *Walker*, 294 U. S. 311.) *Mutual Loan Co.* v. *Martell*, 225.

13. *Police power; limitations upon.*
Police power is but another name for the power of government; it is subject only to constitutional limitations which allow a comprehensive range of judgment, and it is the province of the State to adopt by its legislature such policy as it deems best. *Ib.*

14. *Police power; assignment of future wages; regulation within.*
A State may, as a police regulation, make assignments of future wages invalid except under conditions that will properly restrict extravagance and improvidence of wage-earners. *Ib.*

15. *Police power; assignment of future wages by married men; regulation within.*
A State may, under conditions justifying it, prescribe that an assignment by a married man of wages to be earned by him in future shall be invalid unless consented to by his wife. *Ib.*

16. *Police power over Federal subjects; cessation of, during intermediate period between action by Congress and date at which act goes into force.*
Congress by enacting a statute in regard to a subject within its exclusive power manifests its purpose to call that power into effect, and at once removes that subject from the sphere of state action and even if Congress provides that the statute shall not go into effect until a subsequent date the States lose control of that subject during the intermediate period from the enactment to the active operation of the statute. *Northern Pacific Ry. Co.* v. *Washington*, 370.

17. *Same.*
The enactment by Congress of the Hours of Service Law, March 4, 1907, c. 2939, 34 Stat. 1415, was a manifestation by Congress of its intent to bring the subject of hours of labor of employés of interstate carriers under its control; and, although the act did not go into effect for a year after its passage, the various state laws on the subject became inoperative at once on the enactment. *Ib.*

18. *Police power; when right to exercise ceases with action by Congress.*
The right of a State to apply its police power to subjects under the exclusive control of Congress, but in regard to which Congress has been silent, ceases as soon as Congress acts on the subject and manifests its purpose to call into effect its exclusive power. *Ib.*

19. *Police power; oil as subject of regulation.*
The fact that oil inspection laws have been passed in a majority of the States shows that oil is a proper subject for police regulation. *Red "C" Oil Co.* v. *North Carolina*, 380.

20. *Police power; powder as subject of.*
An article, such as powder, which is dangerous to handle in proportion

to the quantity handled, is properly subject to police regulation in regard to quantity from which harmless articles of commerce are exempt. *Williams* v. *Walsh*, 415.

See CONSTITUTIONAL LAW, 2, 3, 15, 17, 26–29; FEDERAL QUESTION, 2; INTERSTATE COMMERCE, 15–20; MUNICIPAL CORPORATIONS, 1, 3; NAVIGABLE WATERS; REMEDIES, 1; TAXES AND TAXATION, 9, 15–18.

STATUS QUO.

See APPEAL AND ERROR, 4.

STATUTE OF FRAUDS.

See CONTRACTS, 10.

STATUTE OF LIMITATIONS.

See CONSTITUTIONAL LAW, 4.

STATUTES.

A. CONSTRUCTION OF.

1. *Purpose of statute controlling.*

As between opposing views in regard to the construction of a statute the court in this case accepts the one in accord with the manifest purpose of Congress. *Southern Ry. Co.* v. *United States*, 20.

2. *Power manifested and not motive initiating it considered.*

In construing a statute the court must be controlled by the power manifested by the act and not by the motive which initiated it; the scope of the act may extend beyond the generating causes thereof. *Berryman* v. *Whitman College*, 334.

3. *Application of rule against imputing to Congress intention to depart from long enforced uniform policy.*

The rule of construction that an intention to depart from a long enforced uniform policy will not be imputed to Congress, applied in construing the act of April 28, 1904, 33 Stat. 552, c. 1772, relative to coal lands in Alaska. *United States* v. *Munday*, 175.

4. *Reference to reports of committees of Congress.*

In this case the court referred to the report of the committee of Congress having the legislation in charge as indicating the intent of Congress in enacting the statute. *Northern Pacific Ry. Co.* v. *Washington*, 370.

5. *Known policy of Congress considered.*
In construing an act of Congress, the known policy of Congress in regard to the subject-matter of the statute will be considered. *Richardson* v. *Harmon*, 96.

6. *Measure of meaning; when character of statute and when words used constitute.*
If there be ambiguity, the character of the statute determines for strict or liberal construction, but where there is no ambiguity the words of the statute are the measure of its meaning. *United States* v. *Baltimore & Ohio S. W. R. R. Co.*, 8.

7. *Meaning given to general words following words descriptive of particular actions.*
Where general words follow words descriptive of particular actions they should, unless clearly manifested to the contrary, be construed as applicable to cases or matters of like kind with those described by the particular words. *United States* v. *Stever*, 167.

8. *Legal expressions in; presumption as to.*
Congress will be presumed to use familiar legal expressions in their familiar legal sense. *United States* v. *Fidelity Trust Co.*, 158.

9. *Phrases used; presumption as to consciousness of meaning by Congress and intention in use.*
This court assumes that Congress uses a phrase in a statute with a consciousness of its meaning and with the intention of conveying such meaning. *United States* v. *Garbish*, 257.

10. *Exceptions in favor of offenders against criminal law, rule against.*
A statute will not be construed as grafting exceptions on the criminal law in favor of offenders against that particular statute in the absence of clear and unambiguous expressions. *United States* v. *Morgan*, 274.

11. *Silence as to prosecution not construed as permitting perjury.*
A statute in regard to giving testimony, which does not provide for prosecution of perjury, will not be construed as permitting perjury because in other statutes in that regard Congress has, from abundant caution, inserted provisions as to prosecution of perjury. *Glickstein* v. *United States*, 139.

12. *Codes; subsequent legislation; effect to supersede provisions of.*
In view of the custom of embodying National legislation in codes and

systematic collections of general rules, it is the settled rule of decision of this court that subsequent legislation upon a subject covered by a previous codification carries the implication that general rules are not superseded by such subsequent legislation except where it clearly appears. *United States* v. *Barnes*, 513.

13. *Same.*

Where there is a codification of revenue laws to prevent fraud, the inference is that subsequent legislation is auxiliary to the earlier, and only in case of manifest repugnancy will it be construed as an abrogation thereof. (*Wood* v. *United States*, 16 Pet. 342, 363.) *Ib.*

14. *Law imposing graduated tax; effect of partial unconstitutionality.*

A statute imposing a graduated tax would not necessarily be held unconstitutional as to the initial rate, even if the provisions as to the higher rates were unconstitutional. *Keeney* v. *New York*, 525.

15. *Penal; strict construction.*

Courts are not inclined to make constructive crimes, and in this case the general rule that penal statutes must be strictly construed applies. *United States* v. *Baltimore & Ohio S. W. R. R. Co.*, 8.

16. *Penal; confounding of willful and unwillful acts avoided.*

A penal statute should not be construed as confounding unwillful with willful acts by uniting in criminality and penalties parties to whom no notice need be given with those to whom notice must be given. *Ib.*

17. *Repeals by implication; presumption against inefficiency of statute.*

Repeals by implication are not favored; nor is there a presumption that a law passed in the interest of public health was intended to hamper prosecutions of offenses against the statute itself. *United States* v. *Morgan*, 274.

See ACTIONS, 1;
CRIMINAL LAW, 2, 3, 4;
FEDERAL QUESTION, 3;
JURISDICTION, A 12, 16, 17, 18;
MARITIME LAW, 1, 2;
MAXIMS;
OLEOMARGARINE ACT;
PRACTICE AND PROCEDURE, 9–14, 17;
PUBLIC LANDS, 5;
PUBLIC WORKS, 3;
RAILROADS, 1;
TAXES AND TAXATION, 2;
TERRITORIES, 3.

B. STATUTES OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.
See LOCAL LAW.

SUBROGATION.
See BANKRUPTCY, 14;
CONTRACTS, 17.

SUPERSEDEAS.
See APPEAL AND ERROR, 6, 7.

SURETIES.
See CONTRACTS, 5;
PRINCIPAL AND SURETY.

TARIFF.
See CUSTOMS LAW.

TAXES AND TAXATION.

1. *Excise on transfers; character of tax.*
An excise on transfers does not become an *ad valorem* tax on the property conveyed because the amount is based on the value of such property. (*Magoun* v. *Illinois Trust Bank*, 170 U. S. 283.) *Keeney* v. *New York*, 525.

2. *Exemptions; strict construction; broadness of rule.*
The rule that exemptions from taxation must be strictly construed against the exemption is as broad as the subject to which it relates; the rule applies not only to the extent of the legislative grant itself but also to the power of the legislature to make it. *Berryman* v. *Whitman College*, 334.

3. *Inspection fees; character of statute imposing.*
In this case this court cannot conclude that the charge for inspecting oil, provided by the North Carolina oil inspection law of 1909, is so seriously in excess of what is necessary for the object designed to be effected as to justify the imputation of bad faith and the conclusion that the law is one for revenue and not merely for inspection. (*Patapsco Guano Co.* v. *South Carolina*, 171 U. S. 354.) *Red "C" Oil Co.* v. *North Carolina*, 380.

4. *Inspection fees; character of statute imposing.*
This court will not lightly attribute improper motives to the law-making power, and will not, on a mere charge, regard a statute

imposing inspection fees as an act to raise revenue. (*Ellis* v. *United States*, 206 U. S. 246.) *Ib.*

5. *Inspection fees; reasonableness of.*
Prima facie, the charge for inspection in an act otherwise constitutional is reasonable. (*Western Union Tel. Co.* v. *New Hope*, 187 U. S. 417.) *Ib.*

6. *Inspection fees; presumption as to action of State when fees excessive.*
If the inspection fees exacted under a state statute average largely more than enough to pay expenses, the presumption is that the State will reduce them to conform to the constitutional authority to impose fees solely to reimburse for expense of inspection. *Ib.*

7. *Interference with taxing power justified, when.*
The taxing power can only be interfered with on the grounds of unjustness where the abuse is flagrant and can be remedied by some affirmative principle of constitutional law. *Southern Pacific Co.* v. *Kentucky*, 63.

8. *Legality of tax not measured by benefits or protection afforded by taxing power.*
Although equality of burdens be the general standard sought to be obtained in taxation, the legality of the tax is not to be measured by the benefit received by the taxpayer, nor are protection and taxation necessarily correlative obligations. *Ib.*

9. *Situs for taxation; intangible property of corporation taxable, where.*
A corporation organized under the law of a State and having its general office and holding its corporate meetings therein, receives such protection from that State as affords a basis for taxing its intangible property which has not acquired a situs for taxation elsewhere. *Ib.*

10. *Situs for taxation; effect of enrollment of vessel at port or marking of name of port thereon.*
An artificial situs for purposes of taxation is not acquired by the enrollment of a vessel at a port or the marking of that port on the stern, under §§ 4141 and 4178, Rev. Stat., as amended by the act of June 23, 1874, 18 Stat. 252, c. 467. *Ib.*

11. *Situs of vessel for purposes thereof.*
The taxable situs of a vessel which has no permanent location within another jurisdiction is the domicile of the owner. *Ayer & Lord*

Tie Co. v. *Kentucky*, followed, 202 U. S. 409, and *Old Dominion Steamship Co.* v. *Virginia*, 198 U. S. 299, distinguished. *Ib.*

12. *Situs of vessel for purposes thereof.*
A vessel is built to navigate the seas and not to stay in port and it does not acquire a situs in one port rather than another by reason of frequently visiting the former. (*Hays* v. *Pacific Mail Steamship Co.*, 17 How. 596.) *Ib.*

13. *Situs of vessel for purposes of. Power of State to tax not dependent upon existence of port therein.*
The taxable situs of a vessel not permanently located within another jurisdiction does not depend upon whether the State which is the domicile of the owner possesses a port which such vessel could reach. Such a test would introduce elements of uncertainty dependent upon draft of the vessel and depth of the water. *Ib.*

14. *Situs of vessel for purposes of; domicile of owner as situs.*
Vessels engaged in coastwise trade belonging to a Kentucky corporation held to be taxable in Kentucky although enrolled in the port of New York, having the name of New York painted on their sterns and never were at any port in Kentucky. *Ib.*

15. *State; power to impose transfer tax.*
A State may impose a transfer tax based on personal property passing under a trust deed to take effect at the grantor's death if the property had its situs in that State when the deed was made. *Keeney* v. *New York*, 525.

16. *State; power to tax property passing under trust deed effective on grantor's death.*
Where the power to tax exists, the State may fix the rate and say when and how the amount shall be ascertained and paid, and if the personal property has its situs in the State when the deed is made, it may tax a transfer of personal property under a trust deed to a resident of the State to take effect at the grantor's death, although the personal property at that time may be without the State. *Ib.*

17. *State; right to tax privilege of acquiring property by trust instrument.*
The privilege of acquiring property by trust instrument, taking effect on the death of the grantor, is as much dependent on the law as that of acquiring property by inheritance and is subject to taxation by the State. *Ib.*

18. *State tax law; law governing validity.*
Where a state tax on the transfer of property does not offend the Con-

stitution of the United States, its validity must be determined by the law of the State. *Ib.*

19. *War Revenue Act; legacy constituting vested life estate; recovery of taxes paid.*

A legacy to pay over net income to the legatee in periodical payments during the legatee's life on which the legatee has received several payments of income is not a contingent beneficial interest, but a vested life estate; and taxes paid on the value of such a legacy under the War Revenue Act of June 13, 1896, c. 448, 30 Stat. 448, 464, cannot be recovered under § 3 of the act of June 27, 1902, c. 1160, 32 Stat. 406. *Vanderbilt* v. *Eidman*, 196 U. S. 480, distinguished. *United States* v. *Fidelity Trust Co.*, 158.

See CONSTITUTIONAL LAW, 7, 15, 17, 28; INTERSTATE COMMERCE, 15, 16; JURISDICTION, A 5, 6, 7; OLEOMARGARINE ACT; PRACTICE AND PROCEDURE, 21; STATUTES, A 14; TERRITORIES, 1, 2.

TERRITORIES.

1. *Special privileges prohibited by act of March 2, 1867.*

The act of March 2, 1867, 14 Stat. 426, now Rev. Stat., § 1889, prohibiting the granting by territorial legislatures of especial privileges related to conferring new privileges on existing corporations as well as to granting privileges in original charters; and the prohibition included all especial privileges such as exemption from taxation. *Berryman* v. *Whitman College*, 334.

2. *Special privileges within prohibition of § 1889, Rev. Stat.; exemption from taxation as.*

A contract for exemption from taxation is an especial privilege, and is none the less within the prohibitions of § 1889, Rev. Stat., because granted to an educational institution; it cannot be regarded as beyond the prohibition because granted as an equivalent. *Ib.*

3. *Acts of; effect to validate, of failure of Congress to disapprove.*

The fact that Congress failed to disapprove an act of a territorial legislature does not validate it if the act was passed in direct violation of a prohibitive provision in the organic act. (*Clayton* v. *Utah*, 132 U. S. 632.) *Ib.*

TESTAMENTARY LAW.

See ESTATES OF DECEDENTS; WILLS.

TITLE.

See BANKRUPTCY, 9;
CONTRACTS, 17.

TORTS.

Detention of vessel; liability of collector of port for placing inspector on vessel held by marshal under irregularly issued process.

A collector of the port cannot be held responsible for detention of a vessel because he places an inspector thereon with orders to detain her if she attempts to sail, if at the time the vessel is validly in custody of the marshal and the inspector is withdrawn before the possession of the marshal terminates. *Bryan* v. *Ker*, 107.

See CONSTITUTIONAL LAW, 3; LEX LOCI;
COURTS, 3; MARITIME LAW, 2–6.

TRANSFER TAX.

See CONSTITUTIONAL LAW, 7, 15, 17;
TAXES AND TAXATION, 1, 15–19.

TRANSFERS OF TITLE.

See STATES, 8.

TRANSPORTATION.

See INTERSTATE COMMERCE, 7, 19.

TREATIES.

See WAR, 8.

TRIAL.

See PRACTICE AND PROCEDURE, 3.

TRUST DEEDS.

See TAXES AND TAXATION, 15–18.

TRUSTEE SALES.

See SALES, 2.

TRUSTS AND TRUSTEES.

See BANKRUPTCY, 9.

TUCKER ACT.

See JURISDICTION, E.

UNITED STATES.
See FRAUD;
PUBLIC LANDS, 1;
WAR, 4, 5.

VENDOR AND VENDEE.
See BANKRUPTCY, 14;
CONTRACTS, 17–20;
SALES, 1, 2, 4.

VESSELS.
See CONSTITUTIONAL LAW, 3; MARITIME LAW; TAXES AND TAXATION, 10–14; TORTS.

VIRGINIA *v.* WEST VIRGINIA.
See STATES, 6, 7.

VOUCHERS.
See FRAUD, 2.

WAGES.
See CONSTITUTIONAL LAW, 8;
STATES, 14, 15.

WAR.

1. *Civil and international war distinguished.*

There is a distinction between the capture of an enemy's port in a war with a foreign country, and the restoration of national authority over territory in a civil war and in the protection of property after capture. *The Venice*, 2 Wall. 258, distinguished. *Herrera* v. *United States*, 558.

2. *Enemies; who deemed.*

War makes of the citizens or subjects of one belligerent enemies of the government, citizens and subjects of the other. *Ib.*

3. *Enemy's country; who deemed enemies.*

During the war with Spain Cuba was enemy's country; and all persons residing there pending the war, whether Spanish subjects or Americans, were to be deemed enemies of the United States, and their property enemy's property and subject to seizure, confiscation and destruction. *Ib.*

4. *Enemy property; what is.*
Property in the harbor after the capitulation of Santiago remained enemy property, and seizures thereof by the United States were acts of war. *Ib.*

5. *Enemy property; confiscation; effect of proclamation of July 13, 1898.*
Nothing in the President's proclamation of July 13, 1898, militated against the right of the United States to confiscate enemy's property for the use of the army of occupation. *Ib.*

6. *Laws of; effect of President's proclamation of July 13, 1898, to interfere with.*
The President's proclamation of July 13, 1898, was not intended to supersede the laws of war, to interfere with the seizure, confiscation, or destruction of property necessary for the operation of war, or to attach to the necessary appropriation of such property by military officers the obligations and remedies of contracts. *Diaz* v. *United States*, 574.

7. *Seizure of property; distinction in.*
There is a distinction between a seizure of private property of an enemy for immediate use of the army and the taking of such property as booty of war. (*Planters Bank* v. *Union Bank*, 16 Wall. 483.) *Herrera* v. *United States*, 558.

8. *Seizure of property; effect of treaty of peace on claims of Spanish subjects.*
Right of Spanish subjects against the United States for indemnity for illegal seizures and detention of property during the war of 1898 was taken away by the treaty of peace. (*Hijo* v. *United States*, 194 U. S. 315.) *Ib.*

9. *Seizure of property during war with Spain; liability for United States for.*
Herrera v. *United States*, *ante*, p. 558, followed as to the nature and effect of, and liability of the United States for, seizures and detention of vessels in Santiago harbor after the capitulation of 1898. *Diaz* v. *United States*, 574.

See JURISDICTION, E.

WAR REVENUE ACT.

See TAXES AND TAXATION, 19.

WATERS.

See NAVIGABLE WATERS.

WILLS.

1. *Equitable titles subject to devise.*

Equitable titles are subject to devise and if not specifically bequeathed, form part of the residuary estate. *Mayer* v. *American Security & Trust Co.*, 295.

2. *Residuary clause; objects of; inclusion of equitable estates.*

One of the objects of a residuary clause is to gather up unremembered, as well as uncertain, rights; and the words "all the rest and residue of my estate, real, personal and mixed, which I now possess or which may hereafter be acquired by me" are sufficient to carry an equitable estate. *Ib.*

See ESTATES OF DECEDENTS;
JUDGMENTS AND DECREES, 3.

WITNESSES.

See BANKRUPTCY, 12, 13;
CONSTITUTIONAL LAW, 23–25.

WORDS AND PHRASES.

"*At or near*" (see Railroads, 3). *Union Pacific R. R.* v. *Mason City &c. R. R.*, 237.

"*Controversy*" within meaning of § 24*a* of Bankruptcy Act (see Bankruptcy, 10). *Tefft, Weller & Co.* v. *Munsuri*, 114.

"*Original package*" *as used in state statutes.*

The term "original package" as used in a state statute does not necessarily have the same meaning as when used in some of the decisions of this court. *Williams* v. *Walsh*, 415.

See STATUTES, A, 7, 8, 9.

WRIT AND PROCESS.

1. *Execution; when marshal protected in case of process in rem.*

If process *in rem* is apparently valid and it does not appear on the face thereof that the libel on which it is issued discloses only a personal action for damages the marshal is protected in executing it. *Bryan* v. *Ker*, 107.

2. *Irregularity in issuance of writ; effect on duty of marshal to act.*

Although a writ which the court has power to issue in a proper case may have been irregularly issued, the marshal is authorized and bound to act thereunder if it comes into his hands as an apparently valid writ. *Ib.*

3. *Same; cure of irregularity; liability of marshal acting under irregularly issued writ.*

Although the attempted delegation of authority may have been ineffectual to clothe the person signing a writ with power to do so, the marshal is protected in executing it, if it is in the usual form and bears the seal of the court; such an irregularity can be cured by amendment substituting the signature of the person properly authorized. *Ib.*

See APPEAL AND ERROR, 6, 7; HABEAS CORPUS; JURISDICTION, D; MANDAMUS.